Legislative Business.

THE TRAVANCORE AGRICULTURISTS' RELIEF BILL—(*Contd.*)

PRESIDENT : When the House adjourned last evening it was discussing item No. 15 (*b*) in the list of amendments and Mr Puthupalli Krishna Pilai was on his legs. We will now resume discussion on that Clause.

Clause 2.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*) : Sir, I was supporting the amendment moved by Mr. Elenkath, *viz.*. that in Clause 2, delete sub-clause (*c*) and substitute the following for the same :—

"Conciliation Officer" means an officer appointed by Our Government for the purpose of conciliating debts under the provisions of this Regulation".

The object of such an amendment is only this. Retention of the word Board and the definition of that expression was justifiable under the old Bill. The Law Member who drafted the Bill had in his mind the constitution of a Board consisting of officials and non-officials. Clauses 3 and 4 were also framed in order that the constitution and the working of the Board might be properly provided for. The members of the Select Committee disagreed with the proposal of the draft Bill on this point, *viz.*. that the Board shall consist of three persons. The Select Committee said that the Board shall consist of only one person who will hereafter be called a Conciliation Officer. It is on that basis that all the remaining provisions have been re-drafted, What was a Board consisting of three members was done away with by the Select Committee, and a Conciliation Officer substituted in its place. If conciliation is to be effected by a single officer, I do not understand why he should not be called a Conciliation Officer. Why an officer should be denominated by the expression B ard passes my understanding. The first thing is, as far as possible, we should avoid unnecessary expressions in legislative enactments. If it is only a Conciliation Officer, let him be a Conciliation Officer as defined or contemplated by the Bill. It is unecessary to call him a Board. If, as is defined, a Conciliation Officer is appointed by Government for the purpose of conciliating debts under this Regulation, there will be absolutely no meaning in calling him a Board. Further, the expression Board would have been quite appropriate if it consisted of more than one individual as was contemplated previously. Legally it would appear all right ; there is no objection even in constituting a Board and allowing only one individual to constitute that Board.

MR PACODE A. NARAYANA PILLAI (*Vilavankod*) : Is the member aware that as many as three substantial amendments are tabled to revert back to the old Boards, *i. e.*, a Board, consisting of more than one member as defined in the draft Bill and not to have a Board consisting of a single officer?

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): I am aware of all that is printed in the amendment list. But the motion before the House is to delete the expression Board and I am submitting my arguments for its deletion. There is no justification in my opinion for the retention of that, if we sre going to accept the amendment made by the Select Committee in regard to the appointment of a Conciliation Officer for the purpose of conciliating debts. It is only on that assumption that it is made. If my friend would put forward an amendment and give us a definition relating to the authority whether the Board or Conciliation Officer, or the powers relating to the Conciliation Officer, then I have no objection. This Regulation must contain a definition of the word 'Board'. It should contain only one or other of these two things. If it is the original Board that we propose to have, let us define that expression, retaining the definition in the way in which it has been done in the old Bill.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): May I know whether, in the original Bill, there was a provision for a single member Board?

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): We are now considering the Bill as re-drafted by the Select Committee. I think that the proposal of the Committee is to appoint a Conciliation Officer and the provision in Clause 3 has defined what the Conciliation Ofiicer shall be. If it is a Conciliation Officer, I cannot understand why he should be called a Board. If there is any legal significance attached to that expression 'Board', if by calling a Conciliation Oficer a B oard, in law, he would secure certain powers that the law implies, *i. e.* which the law confers upon a Board to be acquired. I can understand that. His powers are only the powers defined by this Regulation. If he is to be called only a Conciliation Officer, I cannot understand why he should be called a Board.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Is there any *material* objection in calling him a Board?

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): You must call a spade a spade. If it is a Board, you must call it by the expression Board. If it is a Conciliation Officer, you must call him a Conciliation Officer. Why should you call a Conciliation Officer a Board. Formerly, when it was a Board, it consisted of three members and there were one official and two non-officials.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): May I know whether this amendment is put forward as a formal improvement on the Bill or whether there is any material point to be gained?

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): There is a material point to be gained by this amendment. That is my opinion. If you are appointing a Conciliation Officer, appoint him and call him as such and invest him with all the powers of the officer.

MR. A. THANU PILLAI (*Trivandrum-Rural*): The idea is to have a Board and that Board is to contain one officer. What is the objection of the member to call the Conciliation Officer a Board' so long as he is discharging the funetions of the Board?

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): The Board that is appointed under this Regulation shall have only those powers which are conferred upon the Board by this Regulation. It will be the same if he is called by the name of Board or called by the true name of Conciliation Officer. If the members of the Select Committee and the Law Member are in a position to explain to us what distinct advantage will be gained by retaining the word Board for the Conciliation Officer, I will withdraw my amendment.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Is it not for the mover of the amendment to show what disadvantages there are in the Bill as recommended by the Select Committee?

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): As I submitted yesterday, I am of opinion that the Select Committee is not infallible. Various matters, which they might not have considered, might strike some of the honourable members of this House. It is our duty to bring to the notice of this House matters on which they think like that. No one will approve of unnecessary things being retained in this Bill. We are to legislate upon necessary things. If we do so, we want only the necessary definitions and provisions in the Bill. If there is justification to retain all that is unnecessary, then I submit it is not only those things but some other things also that might have to be retained in the Bill. That is no answer to my statement. My submission is, so long as a Conciliation Officer is proposed by the Select Committee, so long as he is invested with the powers defined only by this Bill, and so long as he does not acquire other powers simply because he is to be called by the name which he does not deserve—I mean a Board—my point is that the word Board must be deleted. You may call him a Conciliation Officer wherever he is to function. He may be described by that expression as is defined in the Bill. If that is done, the expression Board might be deleted.

PRESIDENT: There is sub-clause 3 (*d*) which is an explanation to Clause 2 (*c*).

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): But I am dealing with Clause 2, sub-clause (*c*).

PRESIDENT: Clause 3 carries out the intention of Clause 2 (*c*), Clause 3 (*d*) refers to the Board and therefore in Clause 2 (*c*) the Bill tries to define that.

MR. P. C. KURIYAN (*Kottayam I*): Sir, a point of order. In the light of amendments coming up later, namely, that a Board should consist of more than one member, is Mr. Krishna Pillai's amendment now in order and could it be discussed?

PRESIDENT: The result of the amendments will hereafter be decided by the vote of the House as each individual amendment comes up for discussion. For that reason, a member cannot be precluded from moving his amendment.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): Yesterday I was saying that I have no objection for the retention of the word board if we have a Board consisting of more than one member.

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. PACODE A. NARAYANA PILLAI (*Vilavankod*): Sir, I have another point of order at this stage. I would request the Chair to invoke the powers vested in it under Standing Order No.25 (*b*) in regulating the discussion under this Clause. The point of order is this. If this discussion is allowed to take place as it is, it will deprive this House of its opportunity to consider certain substantial and important amendments bearing upon Clause 3 (*d*) of the Bill, relating to the constitution of the Board. More than one honourable member of this House has tabled amendments on that Clause, *viz.*, Clause 3 (*d*) on the constitution of the Board.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): Since a point of order can be raised at any time, I wish to submit for ruling by Chair whether on a point of order any speech extraneous to the point of order can be made?

PRESIDENT: He can only state the point of order.

MR. PACODE A. NARAYANA PILLAI (*Vilavankod*): I am referring to Standing Order No. 25 which says as follows —

> "In respect of any motion or any Bill under consideration, the President shall have power to select the new clauses or amendments to be proposed, and may, if he thinks fit, call upon any member, who has given notice of an amendment, to give such explanation of the object of the amendment as may enable him to form a judgment on its admissibility."

PRESIDENT: I understand your point to be that, so long as there is Clause 3 (*d*) which refers to 'board' and as some honourable members have already tabled amendments relating to that, this House will be deprived of an opportunity of discussing them, if the present amendment to Clause 2 (*c*) is carried. If that is so, is it not within the power of the House at the same time to turn down this amendment while considering this Clause.

MR. M. SIVATANU PILLAI (*Tovala*): Then it will be on a wrong issue. I may go with Mr. Puthupalli S. Krishna Pillai on this point. When another amendment comes up, I may have to side with him, so much so, a plurality of matters will arise.

PRESIDENT: You are straying from the point. The point raised here at the present moment is whether the discussion of this sub-clause (*c*) by itself will deprive the House of an opportunity of discussing amendments to Clause 3 (*d*). That cannot be a point of order. All that I can tell the House is, when this particular amendment is before the House, the House will naturally decide the question on its merits. Why should I tie down Mr. Puthupalli Krishna Pillai from moving his amendment? The House has got an opportunity to turn it down in view of Clause 3 (*d*).

MR. K. R. ELENKATH (*Kallkulam II*): May I know whether the amendment which is being discussed now is in continuation of the amendment moved yesterday and to which Mr. Krishna Pillai gave his support.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): In Clause 2 (*c*) when it is stated that our Government may establish a Debt Conciliation Board and in Clause 3 (1) (*d*) the Board shall consist of only one

LIBRARY ARCHIVES Kerala Legislative Assembly

member hereinafter called Conciliation Officer, who is either an officer or is appointed as an officer in the service of our Government, that officer has simply to discharge the powers that are conferred upon the Conciliation Officer. The Board itself ceases to exist when the officer is done away with. I can understand, if the Conciliation Officer is done away with, the Board will exist as a legal entity capable of exercising any of the powers conferred upon the Board under this Regulation. I can understand the Bill making such a provision. If the Board itself can come into existence only with the appointment of a Conciliation Officer and the Board functioning through a single officer, it does not stand to reason that the Conciliation Officer should be called a Board. That is the only object of my amendment. If, as my learned friends suggested, the original provision is to be restored, then the expression 'board' will have to be retained and a definition given. For these reasons, I support the amendment.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): I oppose the amendment. We have defined certain words which occur in the body of the Regulation. All these difficulties would not have cropped up if we had passed the main part of the Regulation and then tried to define words contained therein. Now we are trying to define certain words which occur in Part II of the Regulation. As long as those words are there, it is the duty of the House to define them. On that ground, I oppose the amendment of Mr. Krishna Pillai. We cannot take into consideration what this House is going to do with the subsequent parts of the Bill. If we take into consideration the amendments that are now tabled, we need not define either, the Conciliation Officer or the Board, because there are two amendments saying that Part II itself may be deleted

MR. K. R. ELENKATH (*Kalkulam II*): May I know whether the member is actually opposing the amendment or claiming priority for discussion of any amendment?

MR. A. S. DAMODARAN ASAN (*Mavelikara*): I am apposing the amendment. Definition of the word Board is necessary as long as that word occurs in Part II of the Regulation. Until that Part of the Regulation is amended and the word Board deleted from that Part, the definition has to be retained.

MR. PACODE A. NARAYANA PILLAI (*Vilavankod*): I oppose the amendment. Firstly, discussion of this amendment at this stage when we are dealing with definition in Clause 2 is premature. Secondly, on the merits also, so long as the word Board occurs in several parts of the Bill as revised by the Select Committee, there is no harm in retaining that word Board until we come to the other provisions dealing with the constitution and functions of the Board. It was said that we should call a spade a spade and the definition should actually convey the idea underlying that. It was on that ground Mr. Puthupalli Krishna Pillai objected to the retention of the word Board. In law there is nothing which militates against a Board having a single member. There is the outstanding instance of the Board of Trade in England which consists of

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. Pacode A. Narayana Pillai.]

only one member. It is not a Board which consists of more than one member. In law there is nothing preventing a Board having a single member.

PRESIDENT: So also is the Board of Education.

MR. PACODE A. NARAYANA PILLAI (*Vilavankod*): That is another instance, Sir. In law there is nothing against the use of that expression on the score of purity of language. So long as the term 'Board' occurs especially in Part II of the Regulation, there is no harm in retaining the word 'board'.

There is the other more substantial objection to the consideration of this amendment. The whole debate is to be held in a very helpful manner. We should not prejudice a full and fair discussion of all the relevant portions of the Bill. If Mr. Elenkath's amendment is carried and the 'Board' taken away, the term 'Conciliation Officer' will have to be adopted and the House commits itself to it. Then there are motions already tabled by several members to change the present constitution of the Board and to move for a Board consisting of more than one member. When we come to the various substantial amendments bearing upon Clause 3 (*d*), regarding the constitution of the Board, we will be met by the objection under clause 4 of Standing Order No. 25. Since the House has already committed itself to the agency of conciliation, *viz.*, to consist of a single Conciliation Officer, under clause 4 Standing Order No. 25, other amendments will not be allowed to be discussed. The Standing Order is to the following effect: —

> "An amendment on a question must not be inconsistent with any previous decision on the same question given at the same stage of any Bill or motion.

So, if this is carried, the House commits itself to a Conciliation Officer. There is no longer scope for discussion on a Board. There are motions, for instance, No. 56 under Mr. Kuriyan's name, No. 68 under Mr. S. J. Nair's name, No. 69 under Mr. Pacode Narayana Pillai's name. (*Laughter*). When we begin to move these amendments, we will be met by the objection that the House has already committed itself to a Conciliation Officer. Therefore it is no longer open to question. So in the interest of a fair discussion and reasonable debate, my submission is that this amendment has to be voted down.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I oppose the amendment. I shall first of all explain the scheme of the Bill as regards the Board and the 'Conciliation Officer. The Board is intended to be an institution under the Bill, and the Conciliation Officer is the person to be appointed to that institution for discharging the functions of the institution. Mr. Puthupalli Krishna Pillai stated that all the powers proposed to be conferred by this enactment are to be conferred on a single individual, namely, the Conciliation Officer. That is a wrong assumption. All the powers are proposed to' be conferred on the Board and the Conciliation Officer is proposed to be *appointed* to that Board to discharge its functions and powers.

LIBRARY ARCHIVES Kerala Legislative Assembly

What the Bill contemplates therefore is a *Board* for conciliation purposes though to that institution of the Board a Conciliation Officer is to be appointed. This is not a novel idea, an institution by one name and an officer by another name to be appointed thereto.

In the Civil Courts' Regulation, for example, it is laid down that there shall be a District Court, and to the District Court, the Judges are to be appointed for exercising powers conferred on the District Court. In the High Court Regulation it is laid down that there shall be a High Court and to the High Court, Judges are to be appointed. Such is the case with the Criminal Courts too, for example, a Sessions Court and Sessions Judge. When the Judge or Judges of a Court pronounce orders or judgments, it is considered to be the order or judgment of the Court, though really it is the judgment of the Judge or Judges. In the case of the High Court, where the judgment is come to and pronounced by two judges only and signed by two Judges only, it is considered to be the judgment of the *High Court*. So also, as regards the District Court, where the judgment is pronounced by one Judge, it is taken to be the judgment of the District Court. Thus the idea of an institution and an officer appointed to it is an old one. As I said, under the scheme of the Bill, the Conciliation Board is the institution and the Conciliation Officer is the Officer appointed to that Conciliation Board. Further in postulating an institution and an officer thereto, there is a practical advantage, for the Board will remain where it is to consist of one person or of more than one. Even if an amendment is made to the provision of one officer and a body of persons is substituted for the Conciliation Officer, even in such a case, the other provisions of the Bill may remain unchanged. One device in drafting a Bill is to see that, even if some changes are brought in one clause, the remaining portions should so stand as not to need meddling with. Therefore, this arrangement of a Board and a Conciliation Officer is quite a convenient arrangement too.

In regard to the term "Conciliation Officer", I may say that as the Bill stands, there is a definition of that term, and we have defined "conciliation" also, a term which is not sought to be defined by Mr. Krishna Pillai. Clause 3 (1) (*a*) reads :—

> Our Government may, for the purpose of amicable settlement between debtors and their creditors and among the creditors *inter se* if there be more than one creditor of the same debtor (herein after called Conciliation) establish Debt Conciliation Boards."

Thus we have defined what "conciliation" is. And in sub-clause (*d*) the Bill says :—

> "The Board shall consist of only one member (hereinafter called Conciliation Officer) who is either an Officer or is appointed as an Officer in the service of Our Government."

Thus, in Clause 3, we have defined "conciliation" and "Conciliation Officer." If Clause 3 is not passed and there is difference of opinion about it, the terms "conciliation" and "Conciliation Officer" would become useles, and therefore it would be unwise to put in definitions

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. Kayalam Parameswaran Pillai.]

of these terms in the definition clause. If we do, and if, later on, we omit the provision regarding one man being appointed to the Board, the terms 'Conciliation Officer" and "conciliation" will remain in the de-definition clause without being here or there, in a *thrisanku swargom*, as it were we do not want that. When a Bill is drafted, it is done as far as possible in such a way as to avoid such eventualities. The Bill is not defective in not giving the meaning of the term Conciliation Officer as it is, as a matter of fact, given in Clause 3. Therefore, I would point out that it is best to retain the definition of the word "Board" and not to bring in the term "Conciliation Officer" at this stage. As it is, Mr. Krishna Pillai, wants but a formal improvement of the Bill; and, if it is permissible to say so, I would deprecate it. This Bill is considered as an urgent Bill and it is because of that that a special meeting of this Assembly has been called. It is the duty of the Members no doubt to bring in material amendments and make the Bill an expression of its real intentions. But any attempt at formal improvements does not take us anywhere. It will not certainly help the people who are anxiously waiting for the passing of this Bill. It is the duty of the Assembly to pass the Bill in substance at the earliest possible opportunity. Let us not bother about formalities ; these formal improvements may be made even after the Bill becomes law, for instance, we may bring in an Agriculturists Relief Regulation Formal Improvements Bill. If the House really wants the Bill to be passed early, let us confine our attention to substantial amendments.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): A word of personal explanation. I do not remember to have said that my amendments are only formal and have nothing to do with the merits. If I said like that, it is a mistake. I said that my amendment is something on the merit.

PRESIDENT: Perhaps he construed it as such.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): That may be his individual opinion. There is nothing in the Rules which says that members should not move amendments relating only to formal aspects of the matter. We are as much interested in the passing of the Bill as the learned Law Member.

PRESIDENT: We take item 15 B and item 18 together. In-as much as Mr. Elenkath who was proposing item 15 B had accepted the amendment by Mr. Krishna Pillai, therefore item No. 18 holds the day. I have therefore to put this amendment to the House. The amendment is item No. 18, *viz.*,

> "Delete the whole sub-clause (*c*) of Clause 2, and substitute the following" :—
>
> 'Conciliation officer' means an officer appointed by our Government for the purpose of conciliating debts under the provisions of this Regulation."

The amendment was put to vote and declared lost.

PRESIDENT: Now the point for consideration is whether the other amendments to Clause (*c*) do not drop out.

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I wish to make a statement with regard to my amendment No. 16. My amendment is that the whole clause be deleted. In fact that is connected with amendment No. 44 which is for the deletion of the whole of Part II. If Part II is deleted Clause (*c*) will also be deleted. But, if it is to remain clause (*c*) must remain. That is the position.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): The member can oppose each provision of Part II when it comes up.

PRESIDENT: Next one please.

MR. K. PADMANABHAN (*Chirayinkil I*): I would like to know whether I can move my amendment, *viz.*,

> In Clause 2, sub-clause (*c*), delete the sub-clause and re-number sub-clause (*d*) as (*c*) and (*e*) as (*d*)

PRESIDENT: You will oppose sub-clause (*c*) when the clause is put. It is a simple procedure for you.

MR. K. PADMANABHAN (*Chirayinkil I*): My amendment is for the deletion of the whole sub-clause. Even at the outset I would like to place my views on the subject before the House.

PRESIDENT: On the whole of sub-clause (*c*)?

MR. K. PADMANABHAN (*Chirayinkil I*): Yes.

PRESIDENT: Then as quickly as possible, because the whole clause has been discussed *ad nauseum*. Be as brief as possible.

MR. K. PADMANABHAN (*Chirayinkil I*): My amendment is:—

> "In Clause 2, sub-clause (*c*), delete the sub-clause and re-number sub-clauses (*d*) as (*c*) and (*e*) as *d*.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Is it not the same thing as amendment No. 16?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Mr. Padmanabhan and Mr. Sambasiva Aiyar have given notice of amendments 44 and 45 for deletion of the whole of Part II. Mr. Padmanabhan also can oppose the clauses when Part II comes up.

MR. K. PADMANABHAN (*Chirayinkil I*): That matter has not been decided. Now we are at Clause 2 sub-clause (*c*), and I have tabled an amendment to delete that sub-clause and I submit that I am going to move that.

PRESIDENT: I have already ruled that amendment 16 need not be separately voted upon. Therefore the same rule applies to you.

Now we come to sub-clause (*d*) of Clause 2.

MR. V. RAMAKRISHNA PANICKAR (*Kartikapalli II*): Sir, I beg to move the following amendment:—

> '*In Clause 2, sub-clause* (*d*), *add the word* "*agricultural*" *between the words* "*who n*" *and* "*debt*".

The sub-clause reads thus:—"Creditor means a person to whom debt is owing".

This definition of the creditor is comprehensive enough to include creditors other than those to whom a debt is owing. We are concerned

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. V. Ramakrishna Panickar.]

here with creditors to whom an agricultural debt is owing. Therefore the definition of the creditor should be used in a restricted sense here. Otherwise all manner of creditors will come in for conciliation. At any rate a debt is defined in this Regulation but that definition comes in only later. However a definition of a creditor should be more precise and this amendment is sought to be made with that object.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I oppose the amendment. The word "debt" is defined in sub-clause (*e*) and the word "debtor" is defined in sub-clause (*f*). Debtor means an agriculturist by whom a debt is owing. And, with regard to "debt" the Clause gives a number of qualifications. Mr. Panickar's object in moving this amendment is to see that agricultural debt alone comes within the purview of this Bill and that such debt alone be treated as "debt" under this Bill as can be called agricultural debt. If this House accepts the definition of a creditor as "creditor means a person to whom a debt is owing" then *ipso facto* it would be qualified by the definitions of the term "debt". As the amendment stands, we do not know what "agricultural" debt is. That is not defined. As it is, the word "creditor" stands more or less as a formal definition for the purpose of indicating how a person to whom a debt is owing should be designated. If Mr. Panickar wants to achieve his real object, he must move amendments in the definition of the word "debt".

PRESIDENT: Mr. Panickar, do you withdraw or do you press?

MR. V. RAMAKRISHNA PANICKAR (*Kartikapalli II*): I press the motion.

PRESIDENT: Very well. The amendment is.—In Clause 2, sub-clause (*d*), add the word "agricultural" between the words "whom" and "debt".

The amendment was put to vote and declared lost.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Sir, I move that:—

"*In Clause 2, sub-clause* (*e*) *insert the words "in existence on the date of the commencement of this Regulation" between "agriculturist" and "due" in line 1.*

Sir, the necessity and the justification for enacting this legislation is that the agriculturist who is groaning under heavy indebtedness must be relieved of the same. His present difficulties have arisen owing to a fall in the price of produce and the scarcity of money. And due to this circumstance, his lands are sold for a very low value and is passing into the hands of non-agriculturists. The avowed object of this Bill is to avert such a disaster, and the relief granted is relief by conciliation and by certain temporary provisions made in Part III. If we do not say that the Conciliation proceedings are to apply only to debts that are now in existence, the Debt Conciliation Boards will become perpetual institutions in the State functioning along with the Civil Courts in the land. Before a particular Debt Conciliation Board is dissolved within

LIBRARY ARCHIVES Kerala Legislative Assembly

five years or six years, the debtors will be putting in applications in regard to the debts that accrue subsequent to the date of the Regulation; and these boards will have to decide those applications. That means the life of the Board will have to be extended; and as life is extended, the number of applications will be increasing. As it is, it is only a temporary remedy. It is a relief which is necessitated due to particular circumstances and it must cease when the necessity ceases. There is no allegation now that the price of produce hereafter will also go down and the conditions will be worsened; and so I am only suggesting that the debt as defined need refer only to debts that are now in existence.

MR. PUTHUPALLI S KRISHNA PILLAI (*Quilon II*): I second it.

MR. T. S. JAYANTAN NAMBOOTIRI (*Travancore Jenmies, North*) സർ, ഇവിടെ അവതരിപ്പിച്ചിരിക്കുന്ന ഭേദഗതിയോടു ഞാൻ പരിപൂർണ്ണമായി യോജിക്കുന്നു. ഈ രീതിയിലുള്ള ഒരു ഭേദഗതി എനിക്കും അവതരിപ്പിക്കുവാൻ ഉണ്ടു്. ഇപ്പോൾ നിലവിലിരിക്കുന്ന കടങ്ങൾക്കു നിവർത്തിമാർഗ്ഗം ഉണ്ടാക്കുവാനാണു് ഈ ബിൽ കൊണ്ടുവന്നിരിക്കുന്നതു. ഭാവിയിൽ ഉണ്ടാകാവുന്ന കടങ്ങൾക്കും ഇപ്പോൾതന്നെ നിവർത്തിമാർഗ്ഗം ഉണ്ടാക്കിവയ്ക്കുക എന്നുള്ളതു് ഒരു വിഷമമേറിയ സംഗതിയാണു്. അതാതു കാലത്തു ഉണ്ടാകുന്ന വിഷമങ്ങളെ പരിഹരിക്കുന്നതിനു വേണ്ട നിർദ്ദേശങ്ങൾ നൽകണമെന്നല്ലാതെ എല്ലാക്കാലത്തേക്കും പ്രയോജനപ്പെടത്തക്കവിധത്തിൽ ഉദ്ദേശിക്കപ്പെട്ടിട്ടുള്ളതല്ല. ഈ ബിൽ. ഇന്നത്തെ പരിതസ്ഥിതികളെ ശരിയാംവണ്ണം അറിഞ്ഞുകൊണ്ടുതന്നെയാണു് ഇനിമേലും ജനങ്ങൾ പണവ്യാപാരംചെയ്യുന്നതു്. അതിനാൽ ഇന്നത്തെ കടങ്ങളെ മാത്രം അല്ലാതെ മേൽ ഉണ്ടാകാവുന്ന കടങ്ങളെ ഈ ബിൽ ബാധിക്കാൻ പാടുള്ളതല്ല. ഈ കൺസിലിയേഷൻബോർഡുകൊണ്ടുതന്നെ എല്ലാ കടങ്ങളും തീർക്കണമെന്നു നിശ്ചയിക്കുമ്പോൾ ഈ ബോർഡു് എല്ലാകാലത്തും പ്രവർത്തിക്കേണ്ടിവരുന്നതാണു്. അതിലേക്കു വേണ്ടിവരുന്ന വൻപിച്ച ഒരു തുക ചെലവുചെയ്യുന്നതിനു ശരിയായ ന്യായം കാണുന്നില്ല. അതുകൂടാതെ കടങ്ങൾ തനിയെതന്നെ ഉടഞ്ഞുവിടുവാനിടയുണ്ടു. റെഗുലേഷൻ രണ്ടാംഭാഗത്തു പാട്ടവും മിച്ചവാരവും കടത്തിന്റെ കൂട്ടത്തിൽ പരിഗണിക്കുന്നതാണു് എന്നു പറഞ്ഞിരിക്കുന്നതിനാൽ പാട്ടവും മിച്ചവാരവും ഇനിമേൽ കടമായി വരുന്നതാണു്. ആ കാലത്തേക്കെല്ലാം ബോർഡു വെച്ചുകൊണ്ടിരിക്കണമെന്നു പറയുന്നതു ശരിയല്ല. ഇപ്പോൾ കൂടുതൽ വായ്പകൾ കൊടുക്കുന്നില്ലെങ്കിലും ഇനിമേലും കടം ഉണ്ടാകുമെന്നുള്ളതു നിശ്ചയമാണു്. അതിനാൽ ഇപ്പോൾ നിലവിലിരിക്കുന്ന കടങ്ങളെ ബാധി

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. Jayantan Namputiri.]

ക്കത്തക്കവിധത്തിൽമാത്രമേ ഈ ബില്ലിൽ നിശ്ചയിക്കാൻ പാടുള്ളൂ എന്നാണ് എന്റെ അഭിപ്രായം.

SADASYA TILAKAN T. K. VELU PILLAI (*Trivandrum-Urban*): I also wish to support the amendment. The justification for this legislation is the extraordinary circumstance created by the general economic depression. We hope that at least in the distant future this depression will correct itself or the Governments concerned will be able to devise means by which the difficulties are corrected. Yesterday, Sir, I observed that we may have to make slight inroads into private rights of persons under extraordinary circumstances. If a law is in the Statute Book and if it is to be declared to be of permanent operation, especially when credit becomes impossible, that is a matter for serious consideration, for, the history of agriculture ought to convince us that the agriculturists cannot get on without getting loans. I challenge any lawyer or student of history or politician to maintain otherwise with reference to published books and reports. Take the older documents. Take the Fifth Report of the East India Company. Take the subsequent reports. Not only the reports of the Government of India but of other Indian States, of countries even other than India. The one consideration which has always weighed with politicians and administrators is the possibility of credit. Why do we have Co-operative Societies? Why do we have our Boards? All these recognise the principle that so far as agriculture remains a tantalising operation – and that is also proved by history—so long as the agriculturist, the ordinary kind of agriculturist, is not able to make much profits from agriculture and a vast majority is obliged to live a hand to mouth life, to pass a law which declares permanently that debts will always be conciliated, that the creditor will have some portion not only of the interest but also of the principal, that is a statement, Sir, which will strike at the root of successful agriculture in the country. (*Hear, hear*). Therefore, I am of the same opinion along with Mr. Asan that, while recognising the necessity to pass a law to give relief to the agriculturists who are now suffering, we should also declare to the world that we have not become bankrupts and that we recognise credit as absolutely necessary for our country's prosperity. There are some people who hold that conditions should be made so rigorous that it would be impossible for the agriculturists to borrow at all. That is a proposition which my little knowledge of history and economics rebels against. So long as the Almighty has not provided for a perpetually happy state of affairs for the agriculturist, and for others, the agriculturist cannot but borrow. From time immemmorial he has been borrowing and there will be borrowing hereafter also. Every British Indian Province and every Indian State now-a-days attaches much value to co-operative organisations; and all governments encourage that among agriculturists also both for the purpose of borrowing and for the distribution of agricultural products. I maintain that any law which will have the effect of preventing loans being given to agriculturists will not augur well for the prosperity of the State. (*Hear, hear.*) I therefore support the amendment.

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): Sir, I rise to oppose the amendment. At the outset I want to clear some misapprehensions. It is considered by some, I do not know on what authority, that conciliation, as a method, will destroy credit. It is argued that conciliation is a device adopted temporarily to meet an extraordinary situation and as such will prove dangerous if extended beyond the time-limit prescribed by this Regulation. Sir, I hold the view that there is absolutely no basis for such a view. I cannot see how the necessity, that has now been admitted by all, for resorting to the method of conciliating debts, will cease to exist all on a sudden on the particular date on which this Bill becomes law. Sir, I do not for a moment concede that conciliation will detract the credit of the agriculturists. It has been admitted on all hands that the agriculturist has been ruined by his debts. Hitherto, parties to money transactions had no other go but to resort to courts of law; and this, of course, meant extraordinarily heavy expenditure and inordinate delay. In fact, it is litigation that has made the position of the people of our country so miserable as it is now. It is considered now that, where the parties are willing to settle their disputes amicably and in a less expensive way, they may be allowed to do so. That is what is proposed to be done by the method of conciliation. I fail to see any danger in that method.

SADASYA TILAKAN T. K. VELU PILLAI (*Trivandrum-Urban*): If the general depression ceases, will there be any necessity for conciliation?

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): As and when the depression ceases, we can think of changes in this enactment. But, even when there is no depression, I do not think there will be any harm in having conciliation boards.

MR. P. C. KURIYAN (*Kottayam I*): Is there depression now?

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): I have not yet finished my answer to the previous question; let me first finish it; and then I shall answer the other question.

I submit, Sir that these conciliation boards are going to be of advantage both to the creditor and to the debtor. After all, it is only if all the creditors and the debtors come to an agreement that conciliation is going to bear fruit. Therefore, where is the harm in having the machinery of conciliation even after the depression ceases? In fact, it has been the earnest desire of every one of us to find out a suitable method by which the debtor could be saved from the expenses of the civil courts. My friend Mr. Asan was saying that, if there were conciliation boards even after depression ceases, all people will flock to the conciliation boards even when there is no depression, when conditions are normal. I submit, Sir, if people are likely to resort to concilation even after the depression, if conciliaton boards are really going to be so useful and attractive to the people, that is exactly the reason why conciliation boards should exist for all time to come. Mr. Asan therefore concedes that the method of conciliation will be effective in the settlement of money disputes. It is agreed that the parties can

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. K. Kunjukrishna Pillai.]

avoid unnecessary expenditure, unnecessary law charges, unnecessary delays, unnecessary worries due to all manner of technicalities in courts. Then, where is the harm in allowing the people this convenience of agreement even after depression? Now, on account of the depression, conciliation by consent; this method of conciliation has become indispensible. That does not mean that there is any harm in having it even after the depression ceases.

MR A. S. DAMODARAN ASAN (*Mavelikara*): For normal times, are there not sufficient provisions in the Civil Procedure Code?

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): If so, where is the harm in having these provisions also?

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Is there not much difference between those provisions in the Civil Procedure Code and these provisions in the present Bill?

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): There *is* certainly difference; and that difference is of greater advantage to the agriculturist. That is why I say the agriculturist must get the advantage even after the depression, especially because conciliation can become effective only if all the creditors and the debtor come to an agreement in the matter and there can be no harm.

SADASYA TILAKAN T. K. VELU PILLAI (*Trivandrum Urban*): Cannot the conciliation board issue a certificate in which it can make observations about the creditor?

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): It can; but the certificate will have to stand the scrutiny of a court of law, just like any other piece of evidence.

SADASYA TILAKAN T. K. VELU PILLAI (*Trivandrum—Urban*): Will it not be possible for the parties to let in evidence - to file a schedule of 200 witnesses, for instance—to prove that the observations contained in the certificate are wrong? In other words, is the opinion expressed by the Board in the certificate conclusive? If not, what is the value to be attached to the certificate and to its contents?

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): All that is mentioned in the Bill. It is the courts that have to determine the value of these certificates.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Will not litigation be prolonged by this means?

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): It need not necessarily be prolonged; on the other hand, the very object of conciliation is to do away with litigation, to minimise it at least.

PRESIDENT: I have just one doubt. It is one thing to say that these conciliation boards may be regarded as more or less permanent machinery in the State for the settlement of debts which parties may agree to settle between themselves, and it is quite another thing to say that these conciliation boards which are proposed to be set up by this special legislation should continue, even with the same special privileges and concessions that it gives to the debtor in view of his extremely unfortunate position on account of the present economic depression

LIBRARY ARCHIVES Kerala Legislative Assembly

for ever. These are two different things. Is it your contention that this machinery, with all its special privileges, should continue for all time to come, or do you merely want some kind of conciliation of debt even after the depression?

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*) : I submit, Sir, any changes that may be considered necessary may be effected as and when necessary. All that I want to make out is that there is absolutely no danger in allowing these boards to continue to function even after depression, I mean, even after the artificially fixed period of depression.

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : Is it an artificial period?

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): Yes, it is. While we had data for holding that the depression began in 1105, I do not think we have any data to say how long the depression will continue. Nobody can say that.

MR. P. C. KURIYAN (*Kottayam I*) : Does the member hope that there will be no depression by the time this Bill becomes law?

PRESIDENT Nobody can say anything with regard to that.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): That is the reason why I submit, Sir, that there will be no great harm in leaving the clause as it is. It was argued by my friends that some thing very calamitous would happen to the credit of the country if the clause is left as it is. My only point is that there is absolutely no justification for that kind of apprehension. On the other hand, if there is going to be effective conciliation now, during the period of depression, it is sure to be equally effective and useful even after the depression, especially because it cannot be thought of unless both the parties agree. I therefore oppose the amendment.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : I am in sympathy with the amendment moved by Mr. Damodaran Asan; and I agree with the principle contained in it. Therefore, unless I hear any convincing arguments to the contrary, I propose to accept that principle. But I am unable to accept the amendment in its present form; because Clause 35 expressly provides for debts arising after the commencement of this Regulation; and I am of the opinion that we should deal with this matter.

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : Have I not sent up an amendment for that clause also?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I am not quite sure; but I am prepared to assume that my friend has sent up amendments for that clause also. Anyhow, as at present advised, I am for retaining Clause 35 as it is; and, in that view, the present amendment, in its present form cannot be accepted. Part II of this Bill is the chapter dealing with conciliation, and Clause 33 deals with instalment payment. I am prepared to accept the principle involved in this amendment in so far as Part II of the Bill and Clause 33 are concerned. I would therefore suggest to Mr. Asan to withdraw the present amendment and to propose suitable amendments to Part II and to Clause 33.

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : May I know whether the Law member will be satisfied if I substitute the word "liability" for the word "debt"?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : What I would suggest is that the present amendment may be withdrawn and suitable ones proposed when we come to Part II. As I said, I accept the principle involved in the present amendment.

MR. A. THANU PILLAI (*Trivandrum—Rural*) But the question remains whether the House will follow the Law Member.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : Yes; certainly. As it is, I can only accept the principle of the amendment. I would appeal to Mr. Asan to withdraw the present amendment, and to seek the permission of the Chair for moving suitable amendments to Part II and to Clause 33.

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : I am agreeable to that. I beg leave to withdraw my present amendment.

The question that Mr. Asan be permitted to withdraw his amendment was put to vote and lost. Leave to withdraw was refused.

MR. A. THANU PILLAI (*Trivandrum-Rural*) : I rise to oppose the amendment. There are three categories of debts that we have to consider in this connection, *viz.*, debts incurred before depression, debts incurred since 1105 (during the depression) and till this Bill becomes law, and debts that may be incurred after the Bill becomes law. I fail to see what distinction there is between debts incurred since 1105 and debts to be incurred after this Bill becomes law. I can quite appreciate an amendment to the effect that debts incurred before 1105 should be brought under this provision. If debts incurred since 1105 but before this Bill becomes law are to be brought within the purview of this provision, I emphatically say that debts to be incurred after this Bill becomes law should also be brought within the purview of this Clause. Transactions have to go on hereafter also. If parties are going to agree to abide by the award of the conciliation authority, what harm is there in allowing it? How are the debts to be incurred after the Bill becomes law different from debts incurrred during the depresssion period? As Mr. Kunjukrishna Pillai suggested, after the depression ceases, it will be time enough for us to consider how this enactment is to be modified, if at all. I may warn the House that, as soon as depression is over, people are not going to get all the money that they want. It is only gradually that conditions can be expected to improve. There is therefore absolutely no harm in allowing the clause to stand as it is.

SADASYA TILAKAN T. K. VELU PILLAI (*Trivandrum-Urban*) : Is not this law intended to relieve agricultural indebtedness?

MR. A. THANU PILLAI (*Trivandrum-Rural*) : Nobody doubts that.

The amendment was put to vote and declared lost.

PRESIDENT : Before we rise for lunch, I would echo the appeal so vehemently made by the Law Member for the purpose of expediting

LIBRARY ARCHIVES Kerala Legislative Assembly

the work in connection with this special legislation. As the honourable members are aware, Government, on their part, are exerting their utmost to see that this enactment is placed on the Statute Book as early as possible. The members of the Select Committee were good indeed in having met from day to day, considerably, I should say, to their inconvenience and perhaps to the detriment of their other engagements, and finished the work in a remarkably brief period. As soon as the report of the Select Committee was put in the hands of the Government, Government thought that they had no other alternative except to call a special session of the Assembly; and I have now allotted, as honourable members know, a certain number of days for that purpose. It is the hope, the wish and also the prayer, shall I say, of everybody that this legislation may get through within the period allotted for it. Honourable members can certainly co-operate with Government in that direction. But it is far from me to say that the Chair would like to stifle discussion. But at the same time, honourable members can try to co-operate with the Chair in minimising the discussion as far as possible. I am glad to say that, during my experience of yesterday and this morning, there has been that attempt on the part of honourable members to minimise discussion as far as possible, and I only wish that that will continue until we reach the millennium, namely, the passage of the Bill in this House on Tuesday next. There is, again, the further question for consideration, that after it gets through this House it has got to pass through the other House, and special arrangements have been made for that purpose also. A special programme has been laid down; and I only hope that Government will be in a position to carry out that programme and to get through this legislation before the Budget Session begins. The House will now rise and meet again at 2 O'clock.

The House rose for lunch at 1-2 P. M. and re-assembled at 2 P. M., with the Deputy President in Chair.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) Sir, I beg to move the following amendment:—

"*In Clause 2, sub-clause* (*e*), *lines 1 and 2, delete the words 'secured or unsecured'*".

With the amendment, it will read—

"'Debt' means any liability of an agriculturist, due in cash or in kind, payable under a decree or order of a Civil Court or otherwise, and whether mature or not, but shall not include,—"

Lower down in the list of amendments, there is another amendment standing in my name wherein I want a secured debt to be exempted.

The idea behind the amendment is that, under no circumstances, should secured debts be conciliated and that no attempt should be made to interfere with secured debts. A mortgage is a transfer of interest in immovable property, whether it is simple or usufructuary or anomalous or any other kind of mortgage. It is not intended, as the Law Member has stated in the Statement of Objects and Reasons, to pass

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. R. Sambasiva Aiyar.]

an expropriatory measure. If we interfere with secured debts, we would be interfering with the rights of property already vested. It will be enough for the purpose if some provision is made with respect to unsecured debts My submission before the House is that we should not enact any law which would interfere with the rights over property vested by virtue of the debts being secured. Creditors have been advancing money on mortgages and other charges in the belief that they will get their money in the order of priority guaranteed by the law of the State. We are now trying to change the law which has been applied for such a long time. My point is, it is wrong to pass an expropriatory measure which would in any way interfere with the existing property rights. I would also say that the Madras Act and the other Acts in British India—though the provision is not exactly the same—say that no rights of a secured creditor should be interfered with, unless that creditor voluntarily consents and that no certificate could be issued which would have the effect of depriving him of his costs or any portion of his interest when he sues in a court of law. Therefore, if we interfere with secured debts and create this confusion, I submit that there will be in effect very little security of property in this country. I therefore move that, in Clause 2, sub-clause (*e*) lines 1 and 2, the words 'secured or unsecured' be deleted.

MR. T. S. JAYANTAN NAMPOOTIRI (*Travancore Jenmies, North*): I second it

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, I oppose this amendment. Mr. Sambasiva Aiyar's chief point is that none of the rights of the secured creditor either to recover the money or to claim the priority that he has by reason of the security should be impaired by the provisions of this Bill. First of all, I would point out that the provisions of this Bill do not in substance or in the final result militate against any of the rights of a secured creditor or against his priority except to the extent of reducing the interest that may be due on the debt or in regard to the costs that he may claim in a court of law. In no other way is there any provision in this Bill to curtail the priority or the security compulsorily, that is to say, against the consent of the creditor. That being so, the reason stated for this amendment is unsustainable as it does not exist.

Apart from that, in regard to the acceptance of the amendment itself, if you omit the words 'secured or unsecured', still the secured debt will come in as it is nevertheless a *debt* as an unsecured debt also will be a debt. I can quite understand Mr. Sambasiva Aiyar's real object.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): May I inform the Law Member that, by means of amendment No. 39, I propose to exempt secured debts alone?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, I shall take it that Mr. Sambasiva Aiyar's object is to exclude secured debts from the provisions of this Bill. One of the

LIBRARY ARCHIVES Kerala Legislative Assembly

fundamental provisions of this Bill is Part II relating to conciliation. The Conciliation Boards must have all the debts, secured as well as unsecured in their view, in order that they may decide on the best arrangement for settling the debtors' debts brought up for conciliation. The Conciliation Board, for an effective settlement, must have before their eyes all the debts secured and unsecured and all the assets also of the debtor; and having regard to all the assets and all the debts they have to come to some arrangement. I can understand Mr. Sambasiva Aiyar saying that in such arrangements nothing should seek to impair the rights of the secured creditor. But the present amendment does not appear to be quite logical or sound.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Sir, I did not at all say that the Conciliation Officer should not see the existence of these secured debts. All the secured debts are there and they may be noticed by the Conciliation Officer. For that there are ample provisions in the Biil itself. My only point is that nothing should be done which will in any way affect or reduce the rights of property of the secured creditor. If the Law Member is amenable to that, I do not want any further amendment. I have, by means of an amendment coming later, excluded secured debts from the provisions of this Bill. Therefore I submit that the rights obtained under secured documents should not be interfered with.

DEPUTY PRESIDENT: As between the secured debt and the unsecured debt, the difference consists in the fact of the registered document to evidence the secured debt in the former case.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): No, Sir. That is not it. In the case of a secured debt, it is the transfer of an interest in immovable property. In the case of a sale, there is the transfer of the whole bundle of rights called ownership over the property. But in the case of a mortgage, it is only a transfer of a part of the ownership. My point is that there has been a transfer and that it is valid and existing. If by this Regulation we are to bring it for the purpose of conciliating and reducing the debt, we are divesting the proprietory right which has already vested by the consent of the parties. One party has already transferred a portion of his property to the other and the other is the owner. It is not the absolute ownership of the entire property— then it will be a sale—but it is a transfer of a partial ownership. I submit, that under such circumstances, it is not a case of a debt being evidenced by a registered document. There is no difference in principle between an ordinary hypothecation or a usufructuary mortgage or any other kind of mortgage. Therefore, I submit that, in those cases where there has been a transfer of an interest in immovable property, we should not permit the debt to be conciliated. Therefore, I submit that this is a very important point.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): How does the member hope to achieve that point by this amendment?

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): In this amendment I tried to exclude specifically secured debts but it must be considered along with the latter amendment.

DEPUTY PRESIDENT: That is not before the House.

MR. R. SAMBASIVA AIYAR (*Kunnntnad II*): I will just submit how I wish to secure my object, first by omitting the words 'secured or unsecured' in lines 1 and 2 of Clause 2, sub-clause (*e*) and next by including secured debt as a specific item of debt that should be excluded.

DEPUTY PRESIDENT: In other words, if there are any defects in adopting this particular phraseology, that can be removed by a subsequent amendment. That is your position?

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): No, Sir. As it is, these two amendments may be read tegether. The amendment that I have now moved, by itself, would be incomplete without the other amendment, No. 39.

DEPUTY PRESIDENT: Amendment No. 39 is not now before the House.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I request the permission of the Chair —

DEPUTY PRESIDENT: I am very sorry that permission cannot be given. If, at the time of moving this amendment, Mr. Sambasiva Aiyar represented to the Chair the difficulties he is labouring under, that matter could have been considered. But I cannot take the House by surprise by permitting Mr. Sambasiva Aiyar to move a different amendment in his reply which itself is a matter of concession. I cannot allow that. The only proposition before the House is the particular amendment No. 24.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I bow to the ruling of the Chair. But I wish to make it clear that, if amendment No. 24 is carried, it will secure my object partially though not completely. The object would be attained completely only if amendment No. 39 is also passed. Amendment No. 39 will be taken in due course with the permission of the Chair.

DEPUTY PRESIDENT: Do you press your amendment?

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Yes, Sir.

The amendment was put to the vote of the House and declared lost.

MR. EDAVANATT S. PADMANABHA MENON (*Shertala I*): Sir, I beg to move the following amendment:

"*In Clause 2, sub-clause* (e), *line* 3, *substitute the word 'but' and delete the word 'not' after the word shall' and add the word 'also' after the word 'shall'.*

Sir, in the amended form, it will read—

" 'Debt' means any liability of an agriculturist, due in cash or in kind, secured or unsecured, payable under a decree or order of a Civil Court or otherwise, and whether mature or not, and shall include also—".

LIBRARY ARCHIVES Kerala Legislative Assembly

The object of this amendment is to include debts due to Government also.

MR. A. THAHU PILLAI (*Trivandrum—Rural*): Why should that be specified ?

MR. EDAVANATT S. PADMANABHA MENON (*Shertala I*): To make it clear.

MR. K. PADMANABHAN (*Chirayinkil I*): May I know whether it is his idea to include barred debts also ?

MR. EDAVANATT S. PADMANABHA MENON (*Shertala I*): The idea behind the motion is clear and simple.

DEPUTY PRESIDENT: I want to say this. Honourable members speak of the idea *behind* a motion. Is it different from the idea *underlying* a motion? Do you mean the idea *underlying* the motion or *behind* the motion ?

MR. A. THANU PILLAI (*Trivandrum-Rural*): He may say the idea *contained* in a motion.

DEPUTY PRESIDENT: Yes. He may speak of the idea *contained* in a motion or *underlying* a motion but not *behind* a motion.

MR. EDAVANATT S. PADMANABHA MENON (*Shertala I*): The Law Member on behalf of Goverument said that this is a very necessary legislation.

MR. A. THANU PILLAI (*Trivandrum-Rural*): May I humbly make a suggestion to facilitate progress ? Amendments Nos. 29 to 36 which ask for the deletion of these sub clauses may be considered before amendments Nos. 26, 27 and 28. If these sub-clauses are deleted, then the other amendments need not be considered.

DEPUTY PRESIDENT: I would have considered it if it was stated in time. We are doing formal business and Mr. Padmanabha Menon has spoken of the idea *behind* the Bill and converted it to the idea *underlying* the Bill. He has already moved his amendment. The suggestion of Mr Thanu Pillai cannot be considered now.

MR. EDAVANATT S. PADMANABHA MENON (*Shertala I*): Sir, I was saying that the Government appreciate the great volume of public opinion in favour of this legislation and the result is the present Bill. As the biggest creditor, Government must offer a generous gesture and allow their debts also to be conciliated. Otherwise there will be very little sincerity about the whole measure. There is a loud cry that, if this legislation is enacted into law, it will do a lot of harm. It is alleged that it will unsettle vested interests and it will damage the credit of the State. If the Government also voluntarily come into the conciliation scheme, it will assure and console creditors. There are similar motions to be moved by other honourable members and as such I do not think any further explanation from me is necessary.

MR. KAINIKKARA M. PADMANABHA PILLAI (*Changanachery I*): I second the motion.

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I oppose the amendment. The only point raised in support of this amendment is that the dues to the Government by way of revenue etc., must also be brought within the purview of 'debt' so that they may be conciliated. It has also been said that certain other provisions may also be made to apply to the dues payable to Government. On this point, I may, first of all, say that, so far as Government are concerned, they are already giving ample concessions. They are increasing the instalments in which agricultural loans are repayable and they have been making remissions of land revenue. In regard to land revenue particularly it is an yearly recurring revenue and it is in substance a price payable for enjoying the land. Over and above the concessions referred to, it is not proper that the dues of the Government should be brought before a Conciliation Officer so that they may be conciliated. The House is aware that, without these being paid, the Government cannot function. I have, therefore, to oppose this amendment. This being the only argument adduced in support of this amendment, I am not touching on any other aspect.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): There are other amendments for the deletion of some of the sub-clauses. Either we must be allowed to move those amendments now or we should not be barred from moving those amendments later on.

DEPUTY PRESIDENT: I am quite prepared to allow them if they are of the same character as that.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): In substance the same.

DEPUTY PRESIDENT: The permission asked for by Mr. Asan is granted.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): One of my amendments is No. 29. Another is 32.

MR. R. SIVARAMAN NAIR (*Tiruvalla II*): I have got a similar amendment. That is No. 28. Why not I move it?

DEPUTY PRESIDENT: "Why not I move it" is a question which requires an answer. Mr. Sivaraman Nair, if he was vigilant, could have asked for permission before Mr. Asan. When an honourable member of this House asks for permission, and others in similar position do not ask for it, the facts cannot be ignored. Mr. Asan may move his amendment.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): I beg to move the following amendment:

"*In clause 2, delete sub-clause (e) (i)*".

DEPUTY PRESIDENT: What I propose to do is this. There is one motion moved and seconded and discussed which is before this House. Permission was granted to you because you assured the House that it is more or less of the same character. The other has not yet been put to the vote of the House. After the discussion of your motion is over, I propose to put both these motions to vote.

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : Sub-clause (i) has to be deleted. Sir, the primary object of this legislation is to give relief to the agricultural classes. According to the Law Member we need not care as to who suffers as a result of giving such relief. If the agriculturist suffers, he must be given relief in the interests of the State because he is a pet child of the State. By this sub-clause a debt or other liability due to Government is sought to be exempted from the operation of this Bill. My first objection to the retention of this clause is that the Conciliation Officer or the Board will not be in a position to give adequate relief to the debtor if this kind of debt and the allied kinds of debts, which I am going to submit, are excluded from its purview. On the other hand, we will find that, after the Conciliation Officer settles the debt with the materials before him and within the scope of his jurisdiction, whatever balance that is left to the debtor for his maintenanace will be proceeded against by the Government for realising their dues. And so this exemption, instead of benefiting the debtor, will only injure him as well as the creditor who has foregone his share. Another difficulty that would be experienced is that the Government may, during these proceedings, sell the property or attach them and deprive the Conciliation Officer of his power to distribute the properties of the debtor amongst the creditors. The argument advanced by the learned Law Member that, since the Government are giving all the concessions, they need not be brought within the purview of the Bill does not appeal to me. What the Conciliation Officer is directed to do in Part II is to go into the history of the transation to ascertain whether the debts are tainted by fraud or undue influence, whether any part has been discharged and to make an equitable adjustment. I do not think that the amount due to the Government is going to be reduced on the ground that the debt is vitiated or is unconscionable or inequitable. The public interests are not going to suffer on account of the fact that debts are conciliated. The Conciliation Officer will decide these things only equitably and on a due consideration of the comparative merits of the particular transactions. If the Government keep back and say "Well our debts need not be conciliated because we think it is beneath the dignity of the State to go before the Conciliation Officer and get our claims settled"—

DEPUTY PRESIDENT : The Law Member did not say that.

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : I am just suggesting that, if that is one of his grounds, it will not be proper for the Government, to expect the parties to go before the Conciliation Officer for getting their claims settled.

The prestige of the Board and the finality of the decisions of the Board demand that all the claims against the debtor must be settled by the Board. If the Government had enacted a law saying that no civil courts should entertain suits against Government —

DEPUTY PRESIDENT : Government cannot enact that law. Government means the Executive.

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : Under special powers conferred upon them, they can get the laws enacted.

MR. M. SIVATANU PILLAI (*Tovala*): Is it the member's opinion that the Government can enact any law as they please ?

MR. A. S. DAMODARAN ASAN (*Mavelikara*): There are ample powers with Government to get the necessary laws enacted The Legislative Reforms Regulation contains ample provisions by which laws could be promulgated. My point is this. Suppose the Government say that, since they are dealing with private rights in a just and equitable manner, the civil court need not interfere with their actions and no suit should be instituted against the Government? Will it add to the perstige of the courts or of the Government. The Government which have power to establish courts, appoint and dismiss Judges, etc., go before courts to get their civil rights adjudicated. With regard to conciliation also that should be the attitude of the Government. If they also come before conciliation courts, that will generate confidence in the general public as regard Conciliation Boards. On that ground also it is not proper for Government to say that their debts should not come before the Board.

MR. M. SIVATANU PILLAI (*Tovala*) : Will not the Government : Officer be scared away seeing that the Government has come as a party before the court ?

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : If proper persons are selected as Conciliation Officers, they could never be scared away.

The Law Member was saying that the Government are giving all kinds of concessions such as instalment payments, remission of tax, reduction of interest and so on. That being so, I ask, why not the Government come unhesitatingly before the Conciliation Officer. Why should they say "we will do all that, do not drag us for conciliation"?

DEPUTY PRESIDENT : What the Law Member said was that the Government must function somehow or other.

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : My opinion is the Government must function properly and in that we must support the Government. If there are difficulties in the way, we will find proper ways to meet them. Why should Government set a special standard for themselves where the rights between them and their subjects are to be settled ? For realisation of their dues Government must be prepared to submit to the jurisdiction of Conciliation Boards.

MR. A. THANU PILLAI (*Trivandrum—Rural*) : What does the member say about land revenue ?

MR. A. S. DAMODARAN ASAN (*Mavelikara*): I may also submit that the clause excluding debts due to Government, is not found in the enactments of other Provinces. In Madras, the Punjab and the Central Provinces there is no such exemption. In those places the exemption is only with regard to the land revenue. Here Government wants that all their dues must be exempted.

LIBRARY ARCHIVES Kerala Legislative Assembly

My next amendment is Amendment No. 32 in the list. It reads as follows:

"In Clause 2 delete sub-clause (e) (ii)".

That is any land revenue or anything recoverable as an arrear of land revenue. My point is that Boards should consider only the arrears due. The application is to be made only with regard to the rights that accrue.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Is that amendment also being moved now?

DEPUTY PRESIDENT: Permission was not given to move that amendment.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Then I do not move it.

MR. K. R. ELENKATH (*Kalkulam I*): There is an identical amendment of mine. May I know whether I can speak on this amendment?

DEPUTY PRESIDENT: Mr. Elenkath is liberty to speak on Mr. Asan's amendment.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): I rise to second the first part of Mr. Asan's amendment, that is, for the deletion of any debt or other liability due to the Government. I wish to make a distinction at the very outset. Land Revenue due to Government stands on a different footing. With regard to other debts, Government is a creditor like any other ordinary creditor. I do not agree with the view regarding the land revenue which is a first charge on the property and which is the one source of certain income for Government to carry on the administration of the State. That cannot be considered like other dues. I do not for a moment admit that. But I think, with regard to other dues of Government, it is distinct and there can be no justification for giving any special treatment with regard to such dues. As my friend Mr. Asan pointed out, it will put Government in a position of undue advantage which Government themselves ought to be loath to take. Government say that the debts dues to them should not be conciliated I ask why? Especially in view of the fact that we have provided for a responsible officer of Government for the purpose of conciliation, I fail to see the objection of Government to put their claims also before the Board. I go further and say, Sir, that it is incumbent on Government to submit themselves to conciliation to show to the other crediters in the State that the move for conciliation is not a thing to be despised and that the method of conciliation is the proper method which the Government themselves believe. I think there is absolutely no objection that could be raised, especially in view of the fact that a responsible Government officer is appointed as the conciliation officer. Therefore I think there is absolutely no reason for excluding those debts that are due to Government. As between creditors, there should not be any distinction made ordinarily.

Another argument advanced by the Law Member was that Government give concessions by way of easy instalments and reduced rate

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. K. Kunjukrishna Pillai.]

of interest for amounts due to them. I submit, Sir, there are creditors also who give such concessions. But they are not exempted. If Government are conscious of the fact that they are giving all reasonable facilities to the agriculturists, in respect of debts due to them, these facts can be brought before the Conciliation Board and the officer must be expected to consider all these facts before he draws up the agreement. There is nothing to be lost in that event. On the other hand, there is everything to be gained by including such debts within the purview of Conciliation Boards and to treat Government on a par with other creditors.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): I can very well understand now the implication contained in the announcement made on behalf of Government by the President when it was stated that the Government are very anxious to see that everything that was necessary so far as this Bill was concerned should be done and in the most expeditious manner. Advice was also given to us by the Law Member on behalf of Government that, in affirming the provisions of this Bill, no time should be wasted. This sort of attitude on the part of those who spoke on behalf of Government is mainly due to the provisions contained in this clause. So far as this Debt Conciliation Bill is concerned, there is not one pie which will be lost to Government. The interests of Government are safeguarded under the provisions of Clause 2 (*e*). This safeguard was contained in the original Bill. But it was slightly altered by the Select Committee. So far as Government is concerned, the alteration is nil. As the Bill was originally conceived, all debts due to Government, land revenue due to Government, dues incurred for purposes of trade, debts due to co-operative societies, debts due to lessees— all these were exempted from the operation of this Bill. Then, not only the interests of Government but those of a large body of other creditors also were protected. But the Select Committee found that it was not possible. Because, there will be absurdity in contending that all these debts must be excluded from the purview of this Regulation. I shall presently show how. Suppose a debtor puts in a petition to the Board that the debts shall be conciliated. It automatically operates as an injunction against proceedings being taken in a civil court. There are several classes of debts, trade debts, agricultural debts and debts due to Government. In regard to agricultural debts, all proceedings can be stayed. In regard to trade debts, no proceedings could be stayed. It may be that the Conciliation Officer effects a conciliation of the debts; and before he finishes, those properties will be knocked off by the other creditors and the Government as well. If that is so, how could a conciliation be effected? Therefore members of the Select Committee thought that some other safeguard is necessary. They therefore brought some more debts under the conciliation scheme. But what is the attitude of Government? When a petition is presented before a Conciliation Officer, as much of the amount of debts as possible is

LIBRARY ARCHIVES Kerala Legislative Assembly

brought under it. Let the trader be ruined. Let the co-operative societies stop their activities. Let them all come under the conciliation scheme. They shall not take out execution against the debtor. But every pie that is due to Government shall be realised. Under Clauses (i) and (ii), the whole thing is secure. It was stated by the learned Law Member on behalf of the Government that they will give considerable concession to the debtors. Suppose the debtor does not want any concession. The properties of the debtor will be sold under the Revenue Recovery Regulation and will be lost to an unsecured creditor; to a secured creditor also if it is for arrears of land revenue. The result will be this. Government interests are completely safe, and it is the interest of the people of the State that is now sought to be set at nought. That sort of safeguard is not a proper method. You say it is a Bill drawn up by the Government at the instance of the creditors and debtors of the State. We ought to be impartial in a matter of this kind. In the case of land revenue dues, under the statute it is a first charge. You are in possession of agricultural holding and it is on account of that, that it is due. The first charge is due to Government and therefore you may pay the land revenue to Government. I can understand such an argument. So far as small holdings are concerned, it does not come to much. Probably in the case of large estates, it may come to big amounts. For realisation of agricultural loans, and industrial loans, amounts due under the Abkari Regulation, amounts that are liable to be payable to Government as penalty under the forfeiture clauses in every agreement entered into between Government and a private individual, is there a guarantee that the properties will not be proceeded against? If the Government were to say that they will be satisfied by getting a share of the sale proceeds along with the other creditors, I can understand that. But the promise made is that full concession shall be shown. You ought not to say that the credit of the people may be ruined, but ours has to be secured because the administration has to go on. Without us, how could Government go on? If, on the other hand, you say that you want to make us free citizens and honest citizens, then be on the same rank as the other creditors. Take as much as other creditors. I can understand an exception being made in respect of land revenue, dues under the Edavaga Regulation and the Jenmies' dues which are declared under statute to be a first charge on land. Apart from that, there is no meaning in saying that all dues due to Government must be given.

MR. K. R. ELENKATH (*Kalkulam I*): I have only a few words to add to what Mr. Krishna Pillai has said in support of the amendment. His amendment is distinct from that of Mr. Menon. One argument advanced by the Law Member in opposing the amendment is that the Government will cease to function if its recurring source of income is not forthcoming. I do not consider that instalments due from loans advanced for agricultural purposes and other loans have been anticipated by Government as a source of recurring revenue. I think it is only land revenue which is counted as a steady source of recurring income to Government. Of course, when the economic condition is normal, people

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr, K. R. Elenkath]

do and will find their way to pay the land revenue in time. But it is only at times of dire famine when the crops fail and the ryots are deprived of their only source of income that people fail to pay their land tax and Government dues. Now the agriculturists when they took loans and stipulated periodical payments had fixed the amount of instalment in cases before the year 1105 according to the value of the produce then prevalent and anticipating that they could derive good proceeds out of their properties to pay the instalments and leave a margin for their daily requirements. But now the time is changed and they may require greater number of instalments and longer periods. I do not know how the dues of the agriculturists which they owe to Government can be justifiably exempted under the provisions of this Bill if relieving the agriculturist of his present distress as a result of the depression is the object of this Bill. I cannot understand the prime reason in that. So I should think that in justice Government ought to consider themselves as in the position of other creditors and help to relieve the agriculturists from the position in which they are situated at present.

MR. M. SIVATANU PILLAI (*Torala*) : I wanted to oppose this motion and I am opposing it.

DEPUTY PRESIDENT : When you say that you are opposing, it means that.

MR. M. SIVATANU PILLAI (*Tovala*) I am making it clear. My argument would be made clear if I just acquaint the House with a small story. A father and mother were enjoying a pudding at a breakfast table with their mischievous boy and the father's old mother.

DEPUTY PRESIDENT : The House is listening to your story with considerable attention.

MR. M. SIVATANU PILLAI (*Tovala*) : I want it. The mischievous boy was jealous about the father and mother making themselves merry. Then this boy could not control himself and he immediately said (to the father) "I am going to marry your mother." The father turned round and said "What, boy, you are going to marry my mother!" Then the boy retorted, "If you can marry my mother, why not I yours?",

MR. P. C. KURIYAN (*Kottayam I*): Does a son ever marry his father's mother ?

DEPUTY PRESIDENT : That question need not be answered. The House need not take serious notice of it.

MR. M. SIVATANU PILLAI (*Tovala*) : No, Sir I want the House to take very serious notice of it and ponder over it.

DEPUTY PRESIDENT : What I meant was that the House need not take the fact of the grandmother being married very seriously.

MR. M. SIVATANU PILLAI (*Tovala*) : This is strikingly illustrative of what transpires here. Here the Government very conveniently sit on the fence and make the people fight against each other, the creditors on the one side and the debtors on the other. The debtors take the place of the boy and ask the Government, " why not include your debt also?". It is not practicable that the Government should come down with all their claims before the Conciliation Officer,

LIBRARY ARCHIVES Kerala Legislative Assembly

Secondly, we must bear in mind that no Government can function without money. I refuse to understand why land revenue and other agricultural loans should be covered by the Bill. In Nanjinad we pay even Rs. 36 per acre. It may be akin to daylight robbery. Yet we, people of Nanjinad, all along willingly pay such heavy and unjustifiable rate of tax; because we realise that the Government have got to function at any cost. So then land-tax and agricultural loans may be safely left to the Government untouched. Secondly to do it otherwise, it is impractical, with the conciliation officers, since they are mere creatures of Government.

Even if you appoint proper officers, I challenge any one who says that they would act against the interests of Government. I know that from cases in which the Government interests are involved. Imagine Government are on one side and we on the other. Certainly the officers will act against us, not because they are instructed by Government. But they imagine that there is some hidden compulsion to act in favour of Government. If that be the case in experience, when the Government happens to be a creditor and if the transaction goes to a Conciliation Officer, is there any justification to believe that the officer would not be acting in favour of Government?

MR. K. R. ELENKATH (*Kalkulam I*): In case of grievance against the officers, are there not rules provided to take action against them?

MR. M. SIVATANU PILLAI (*Tovala*): That is all true. But I am not concerned with that. The rules may provide. One can lead a horse to the river but twenty can't make it drink.

I only want to provide against such contingency that we come across now. Taking all these things together, it is not after all desirable that Government should be taken as an ordinary creditor; Government should stand apart, though not for the grounds put forward by the Law Member.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, I oppose this amendment; and in doing so I wish to make it clear that my argument relates to such debts as do not specifically come under sub-clause (ii). That sub-clause does not arise in the present motion. At the very outset, I may say that one class of debts that may come under sub-clause (i) is the criminal court fines and the civil court fines. Are criminal court fines and civil court fines to be brought under the purview of this Bill? I am sure honourable members will not agree to that. As a matter of fact Mr. Puthupalli Krishna Pillai has himself tabled an amendment in which he expressly says that any fine or penalty recoverable under the provision of the Criminal Procedure Code should be excluded from the purview of these debts. If the present amendment is to be accepted, the fines imposed by civil courts and criminal courts will also come within the definition of debt and may have to go to the Conciliation Board. I am sure that is not a position which any member would agree to.

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. A. S. DAMODARAN ASAN (*Mavelikara*): What is the effect of non-payment of fines? Is there any alternative form of arrangement for recovery?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Yes. They will be recovered from him by certain processes laid down by law.

Therefore it may be said that that need not come at all for conciliation. A civil suit does not arise for the recovery of fines and conciliation cannot in any way affect these fines. But still you say in effect that even such liabilities should be brought under conciliation. That is one absurdity of the amendment.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): What is the provision similar to this in other enactments in Madras or Central Provinces?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I am not concerned with enactments elsewhere. I am pointing out that on its merit this amendment will include civil court and criminal court fines within this amendment.

MR. A. S DAMODARAN ASAN (*Mavelikara*): May I know whether the Law Member has ascertained how in other places they have met the situation in bringing forward similar legislation?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I am not prepared to answer that question. My friend may himself ascertain that or not ascertain.

MR. K. R. ELENKATH (*Kalkulam I*): The Law Member used the word "absurdity". Is it parliamentary?

DEPUTY PRESIDENT: I also thought that it is a very strong word. But today, yesterday and on other occasions members on both sides of the House, official as well as non-official, were using the expression absurdity" and that was allowed by the House. So, I do not think there is anything wrong in the Law Member using the word "absurdity." If the Law Member thinks it is absurd, he may say that.

MR. M. SIVATANU PILLAI (*Tovala*): We want to know whether it is parliamentary to use that word.

DEPUTY PRESIDENT: Mr. Sivatanu Pillai and others like him must understand that it is not the business of the Chair to gives rulings on any point again and again. Whether unnecessary or necessary, it is just a minute back that I expressed my opinion on that matter. If it was considered to be unparliamentary, the Chair would have given a ruling accordingly. It was pointed out that although I, occupying the Chair, personally think that absurdity is a very strong word, considering the moral conscience of the House which has been so vigilant, and having allowed remarks of that nature to be made on the non-official side yesterday and to-day, I think that there is no necessity to gag the Law Member. He is also quite at liberty to use the word. I do not think "absurdity" is an absolutely unparliamentary expression.

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): I want to know whether we will be permitted to use that expression hereafter. Just for guidance, I am asking.

DEPUTY PRESIDENT: I am very sorry that, in spite of the fact that an important Bill is before us, questions of this unnecessary character are being raised. If I remember right, Mr. Krishna Pillai was the person to use the word "absurd" first. So that, to his mind, there cannot be any legitimate difficulty. To ask whether the word "absurdity" can be used as for this purpose, is an ill-conceived question not in keeping with the reputation which this House occupies for sobriety. I would advise members not to indulge in such expressions but I do maintain that the word is not absolutely unparliamentary as to require an immediate prohibition. That will depend upon the setting in which the word occurs.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I accept your advice.

DEPUTY PRESIDENT: I allowed that. The Law Member at this time is under a serious mistake. I said the Law Member is at liberty to use the word.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I do not want to use that word any more and I am saying to the House that I will not use it. That is why I said I take your advice. I certainly did not use that word against any member but only against the amendment. Anyway, if any member is offended, I would even withdraw that word.

MR. M. SIVATANU PILLAI (*Tovala*): I may assure the Law Member that no one on this side will use that word.

DEPUTY PRESIDENT: All this is wrong.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, on the merits, I was pointing out that this amendment carries with it the necessary implication that criminal court fines will in this way be treated as debt for the purpose of this Regulation. It is therefore that I wanted to point out the illogicality in it. Criminal court fines should never be treated as debt. But if you accept the amendment, one necessary result will be that these fines will come under the purview of "agricultural debt". I say that particularly because in sub-clause (ii) land revenue or anything recoverable as an arrear of land revenue has been excluded from the purview of this Regulation. In sub-clause (i) the chief liability that will be brought within liability or debt is the civil and criminal court fine. It seems to me that it is wrong to include such fines under debt and I hope honourable members would not agree to that.

With regard to debts generally, Government should not be treated as an ordinary creditor because, for one thing, there has not been a demand for legislation against Government. This legislation has its origin, because of an agitation; and, as a result of the agitation, a Committee was appointed. As a member of that Committee, I know

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. Kayalam Paramesvaran Pillai.]

that no agitation was directed against Government, or in regard to debts due to Government. No man had any complaint against Government nor was there any complaint, say, that the Government were insisting on their pound of flesh, in season and out of season.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Has not the Law Member heard on a number of occasions that the Government are acting very harshly against the poor agriculturist?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): No. I may once again say that I am not speaking on the debts coming under sub-clause (ii). I am speaking of such debts due to Government as do not come under sub-clause (ii). I am not at land revenue or anything recoverable as an arrear of land revenue. I am excluding land revenue in my present argument. I am saying deliberately that there has been no demand for legislation as regards debts due to Government. I was a member of the Committee that sat to enquire into it and I never heard that Government was acting harshly or arbitrarily. There was no complaint against Government; and when there was no complaint about that matter, there is scarcely any necessity or justification for including debts due to Government under the Regulation. This is one point.

MR. PUTHUPALLAI S. KRISHNA PILLAI (*Quilon II*): May I know what is meant by anything recoverable as arrear of land revenue mentioned in sub-clause (ii)?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): That will arise only when the next clause comes up. There is an amendment to omit that clause also. I am for the present purposes excluding debts coming thereunder. There are certain liabilities due to Government which do not come under sub-clause (ii) such as, for example, criminal court fines and civil court fines. Will the House agree to such liability being treated as debt in the purview of this Bill? I say "no".

MR. A. THANU PILLAI (*Trivandrum-Rural*): In case sub-clause (ii) is deleted, will not every debt or liability due to Government be covered by sub-clause (i)?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): That may.

MR. A. THANU PILLAI (*Trivandrum-Rural*): In view of sub-clause (ii), the Law Member said sub-clause (i) can only cover fines imposed by civil and criminal courts. I put the question, in case sub-clause (ii) is deleted or even if it is there, will not sub-clause (i) cover every kind of debt due to Government?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I assume for the present purpose that sub-clause (ii) remains as it has not been deleted yet. So I am not advancing any argument bearing on sub-clause (ii). What is the debt that will come under sub-clause (i)?

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Is not a debt due from a contractor, a debt due to Government ?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I am coming to that. In regard to ordinary debts due, say, from a contractor to Government, say, damages, I am saying there has been no demand for legislation as against Government because it must have been felt by the public generally that Government are considerate. When Mr. Asan said that there have been speeches in this House against Government itself, they always related to land revenue and not against debts ; therefore, I am saying there has not been any demand for legislation for the simple reason that Government have always been considerate. Further, Government should not be treated as an ordinary creditor in these matters. Government have to function and should function. Having regard to the needs of Government, and the responsibilities of Government, it is not possible to invest the Conciliation Officer to adjudge upon matters where Government are involved. His judgment would not be like the one in a justiciable case adjudicated on by a court of law. The only question in a court of law is the interpretation of law and the application of the law. But before the Conciliation Board it is not law that is to be administered. The whole thing depends on discretion and judgment only. The Conciliation Officer is called upon to enquire into the amount of the liability and how much of it can be repaid. It is a matter left purely to his discretion and judgement. It is not quite an administration of justice according to law.

MR. A. THANU PILLAI (*Trivandum-Rural*): What is the harm in exercising the provisions contained in Clause 13 (*f*) to (*j*) in the case of debts due to Government ?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Government will consider that.

MR. A. THANU PILLAI (*Trivandrum-Rural*): The ability of the debtor to pay, the availability of assets out of which the debts may be realised, the occupation, needs and other economic conditions of the creditor and the necessity for leaving, as far as possible, a margin of property for the debtor's subsistence. Are these things considered by the Government Official who deals with these matters; or in other words, will they be made available as a general rule applicable to all ?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Government will.

MR. A. THANU PILLAI (*Trivandrum-Rural*): Will not the object of the Bill be frustrated if this concession is not made available as regards debts due to Government also ?

MR. KAYALAM PARAMESVARMN PILLAI (*Additional Head Sirkar Vakil*): No. As I said at the very outset, there has been no demand for legislation in regard to debts due to Government. Money due to the Government is money due to the five millions of people of this State. It is not a case of A owing money to B.

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*) : So far as realisation of debts is concerned, are not the Government and a private creditor on the same footing? If a debtor owes money to Government as also to a private creditor, will not the money realised by selling the debtor's property in court auction be distributed among the private creditor and the Government alike?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : I am not at all sure; I believe that Government is given some priority.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*) : Priority for the Crown arises only where they have a charge on property. In regard to unsecured debts, Government are on the same footing as private creditors.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : No. I do not agree. I believe that there are specific provisions somewhere in the Insolvency Law and in the Civil Procedure Code regarding, say, ratable distribution, which give priority to the Crown even for unsecured debts. That is what I remember; perhaps Mr. Abraham may be able further to enlighten us on the matter. I do hold, Sir, that no comparison should be instituted between the Government and private creditors. As I said, there has been no agitation whatsoever in actual fact against Government at any time. Further, Government money is public money; and Government have heavy responsibilities.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*) : Will it not land us in difficulties during conciliation if Government are not treated on the same footing as other creditors? Because, the conciliation authority may be depending upon the debtor's property for distribution among the creditors. Government may sell away the properties for debts due to them, without the knowledge of the conciliation authority, and leave nothing for the private creditors who may be depending upon those properties.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : I must grant that there is force in what Mr. Krishna Pillai suggests. But, moneys due to Government are public moneys. They belong to the five millions of people inhabiting this land. How can a Government function if moneys due to it are to be treated on the same footing as moneys due to private creditors?

MR. A S. DAMODARAN ASAN (*Mavelikara*) : May I have an idea of the amount of income to Government under fines?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : I do not know. Even if it be one chuckram, I maintain on principle, that it must be treated on a different footing, and should not be brought under conciliation. Apart from the question of the amount involved, if fines are to be conciliated like debts due to private individuals, what about the enforcement of law in the country? I can understand the case of debts which the Government can recover only by a law suit; but certainly fines and such other dues are fundamentally different.

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. PACODE A. NARAYANA PILLAI (*Vilavankod*): Does the Law Member think that Government, as a debtor, may be brought within the purview of this Bill?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I do not agree that the Government, as a creditor, should be brought within this Bill.

DEPUTY PRESIDENT: You are asking the Law Member's private opinion on the matter, Mr. Pacode Narayana Pillai. That does not arise now.

MR. PACODE A NARAYANA PILLAI (*Vilavankod*): Do the Government hold that, as debtor, they should be brought within this enactment?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): No, Sir.

MR. P. C. KURIYAN (*Kottayam I*): I feel bound to support the amendment. Sir, money is lent on the ultimate sanctions of the Government. Whether it is Government money or private money, it is shelled out only on the ultimate sanction with the Government. Therefore, all debts should be treated alike. The Bill, as it was originally introduced, excluded debts due to Government and even debts due to co-operative societies; it was the Select Committee that extended it to debts due to co-operative societies. Even the Select Committee have left out debts due to Government. Mr. Puthupalli Krishna Pillai has explained how the exclusion of debts due to Government would render conciliation of debts impracticable.

Sir, the Law Member was laying much stress upon the argument that Government money was people's money. I must say, Sir, that we, the representatives of the people, are most competent to speak about the people's interests. We are the accredited representatives of the 5 million people of this State. We say that Government are not entitled to any priority or preference, or to any kind of special treatment in regard to debts due to them.

With these words, I support the amendment.

MR. S. CHATTANATHA KARAYALAR (*Shencotta*): I oppose the amendment. Let us just consider what the effect of the proposed amendment will be. The amendment seeks to affect the debts due to the Land Mortgage Bank the agricultural loans, the industrial loans and all special loans granted to the Kuttanad people. In all these cases, Government have advanced money to help the people and not to make any profit by way of interest. These loans have been advanced on concessional terms. If this amendment is carried, naturally, Government will be inclined to discontinue such concessions in future. I do not want such a contingency to happen. I want these facilities to be always available to the people of the country. I want the State Land Mortgage Bank to continue to grant loans, and I want the Government to continue to give industrial and other loans.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): May I take it that the member does not want any private individual to advance money to the agriculturist? Because, after this Bill becomes law, the natural tendency, according to the member, on the part of private creditors also, will be not to lend in future.

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. S. CHATTANATHA KARAYALAR (*Shencotta*): I am not concerned with that now. I am now dealing with the effect of the present amendment.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): On what basis does the member think that the Government will hereafter withdraw these facilities if this amendment is carried?

MR. S. CHATTANATHA KARAYALAR (*Shencotta*): Naturally, that will be their inclination.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Does the member think that no creditor whose moneys are to be brought under conciliation will hereafter advance money?

MR. S. CHATTANATHA KARAYALAR (*Shencotta*): I am not putting it so broadly as that. I am only saying that Government, who have been advancing these moneys on concessional terms with a view to help the people, will hereafter be inclined to stop these facilities if their dues also are to be brought under conciliation. And I am not for it.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Why does the member think like that?

MR. S. CHATTANATHA KARAYALAR (*Shencotta*): It is human nature, Sir.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Is Government human?

MR. S. CHATTANATHA KARAYALAR (*Shencotta*): It is quite human; Government is composed of human beings.

Further, there may be people who may be able to pay the debts due to Government, since there are ample facilities to pay and the terms are very advantageous. Even such persons will resort to conciliation, if this Bill is extended to Government dues also.

On these grounds, I oppose the amendment.

MR. K. C. ABRAHAM (*Kottayam II*): I oppose the amendment. On the face of it, the matter may appear so simple. It is really not so. Sir, the argument has been very strongly urged "Is it something *infra dig* for the Government to be ranked along with private creditors?" Sir, I do not think that is the point on which the whole question turns.

In the first place, the question is one of conflict of interest as between that of Government on the one hand and the interest of the debtor on the otherhand. I think I have full sympathy for the debtor; and we are now legislating for the purpose of relieving the debtors from their distress. But we have to take into consideration also the fact that the whole State is working not only for the individuals but for the upkeep of the State as a polity as such; and I believe that should be behind every consideration of individual and sectional interest. There is the paramount interest of the State to be guarded and the functioning of the State is a matter to be taken as the basic principle. From that point of view my submission is that the Government cannot be put on a

LIBRARY ARCHIVES Kerala Legislative Assembly

par with the other creditors, because the interest of every individual and of collective body is to see that the State as such functions in order that other interests also may work on.

Of course, the question may be urged, and it was pointedly urged, why, in cases where it was not a question of recovery of arrears of revenue, the State, having no priority, should not also come in and rank with other creditors. Of course, as far as I can see, it is only in cases of amounts recoverable as revenue or which have been made recoverable by contract as revenue that the priority of Government exists. But the priority of the Crown in other cases does not arise. In ordinary cases of debts owing to the State, it might be that the State also would be made to rank along with other creditors. That is my view and I suppose it is correct. But that is not a reason why the State should be put in a legislation of this kind on a par with other creditors, because it has been suggested by the Law Member that the State is not working in the interest of any individual but in the interest of all. It is in a fiduciary position so far as all interests are concerned. If that is so, it is the business of all sections to see that that interest is carried out, and unless the interest of the State is carried out in that manner, it is not possible to think that every debt due to Government might come back to the distribution pot. Well, Sir, there is the other aspect of it. What happens if these debts which are owing to the State are allowed to be distributed by the Conciliation Officer ? As my friend Mr Karayalar said, it will be stifling the other activities of Government. The State, apart from its executive function, has other functions in the way of keeping up the interests of the State. In matters of agricultural loans received from the State, in matters of industrial loans and other debts due to the State, I suppose it is in the interests of all persons that the moneys should as soon as possible be put in a circulating stage in order that it may return to the State and go again to other persons who are in need. If that is not facilitated, I suppose there is nothing to be said in favour of a scheme which will lock up the money due to the creditors and which may not be to the advantage of the whole State. Therefore, on these grounds, I oppose the amendment and submit that it should not be passed.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): I wish to say a word in reply.

DEPUTY PRESIDENT: That is becoming a very usual thing. Of course, the right of reply is given in exceptional cases but now I fear it is becoming the rule. The matter has been threshed out.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): I must in fairness be given the chance to reply.

DEPUTY PRESIDENT: If you are very particular, as a special case, you may have a few minutes.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Yes. The learned Law Member has been saying that sub-clause (*e*) (i) includes fines and penalties levied by the Criminal and Civil Courts and as such it would be absurd to delete that clause. With regard to enforcing law by civil and criminal courts, there are ample provisions in the Procedure

LIBRARY ARCHIVES Kerala Legislative Assembly

Codes. In the case of a fine levied by a criminal court, what the Procedure Code says is that, where a fine or a penalty is levied the court shall, in the alternative, sentence a person to imprisonment and that, even after imprisonment, the court can realise the fine by other processes. So, if a person upon whom a fine is imposed does not pay it immediately, there is the alternative process. It cannot be said that, because the court will not be in a position to recover the amount, the interest of justice will suffer. As I submitted, even when I moved this amendment, a clause like this does not exist either in the Madras Act or in the Punjab Act or in the Central Provinces Act. The learned Law Member will not say that absurdities are very much in prevalence there owing to the non-existence of such a clause' (*A member*: *Hear, hear.*) I do not think that, because there is sub-clause (ii), any debt due to the Government will cease to be an amount due to Government. All the debts due to Government will come under sub-clause (i). It is not proper to say that it relates only to amounts that are excluded by subs-clause (ii). I have not heard of any such interpretation.

DEPUTY PRESIDENT: Which are the sub-clauses which you want to omit?

MR. A. S. DAMODARAN ASAN (*Mavelikara*): I want to omit sub-clauses (ii) and (iv) also. But I have moved my amendment only in regard to sub-clause (i).

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): May I point out to the member that the United Provinces Agriculturists' Relief Act of 1934 excludes loans due to Government?

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Sir, it is neither the Madras Act nor the Punjab Act nor the Central Provinces Act which I have referred to. I have referred to three. But the learned Law Member refers to another.

DEPUTY PRESIDENT: There is wisdom on both sides.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): The wisdom on that side is only one-third of the wisdom on this side. (*Laughter.*) It has been stated by the learned Law Member that there has not been any complaint here that the debts due to Government are being realised without any consideration to the debtor. I question that statement itself, because there have been complaints here that the agricultural loans are being realised without any consideration being shown to the difficulties of the agriculturists. I question even that very statement. But assuming that to be so, I wish to know whether there has been any complaint in this House that the creditors are unduly harassing the debtors. There has not been that cry. The only cry in this House has been that the debtors are in need of relief because they are unable to discharge the debts. Therefore, it is not proper for the Law Member to say that there has not been any demand in regard to this. So, on these grounds I press the amendment.

LIBRARY ARCHIVES Kerala Legislative Assembly

DEPUTY PRESIDENT : Before putting these two amendments to the vote of the House I propose to make a few observations. A good many details of fact and argument have been placed before this House. One or two points require further elucidation. The first point is that there are two capacities in which the Government function, one, the function as Government and the other, the function as a kind of commercial or mercantile organisation. So, the two things are essentially dissimilar in character. A tax is levied by Government in its capacity as Sovereign. An ordinary debt contracted cannot be raised to that pinnacle of importance. It may be treated as a matter distinct from that, occupying a pedestal of less importance. I heard many honourable members who spoke on this subject conceding the right of Government to collect taxes by the application of the Revenue Recovery Regulation. I also heard that so far as the other debts are concerned the exceptional power of the State as Sovereign should not be made available. The State is the entity and Government is only its agent The Government has absolutely no independent existence apart from the State and the Law Member's argument was that, in order that the State may function, in other words, in order that the people of Travancore may pursue their avocations in life and earn their livelihood and that law and order may be made available to all, the Government must have exceptional rights and powers. Mr. Karayalar said that, if the other debts also are not put in the same category and given a preferential treatment, the chances are that loans advanced by the Land Mortgage Bank, agricultural loans, industrial loans and so forth will not be granted hereafter. There is force in that observation, for if the Government is not able to realise the money which they have lent out for interest, they may not have an incentive to make any further venture in that direction. At the same time, it must be recognised that, whatever may be the substance of such arguments, the Government will not be willing to oblige the people with similar loans, the fact remains that taxes must be collected. Otherwise the State will not be able to function. The idea that I am emphasising therefore is that these two kinds of debts may be treated separately as falling within two distinct categories. That, I understand, has been the drift of the discussion and I thought it proper to place before the House this distinction so that it might be borne in mind. I now propose to put the two amendments to the vote of the House. I shall put Mr. Asan's amendment first.

The amendment was put to votes.

DEPUTY PRESIDENT : It appears that the motion is carried.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : I demand a poll.

A poll was accordingly taken with the following result :—

LIBRARY ARCHIVES Kerala Legislative Assembly

AYES—25.

1	Mr	V. T. Chacko	15	Mr.	K. Kunjukrishna Pillai
2	"	S. J. Nair	16	,,	Puthupalli S. Krishna Pillai
3	"	A. Thanu Piai	17	"	A. S. Damodaran Asau
4	"	K. R. Elenkath	18	"	Pacode A. Narayana Pillai
5	"	P. C. Kuriyan	19	"	N. K. Krishna Pillai
6	"	S. Nilakanta Pillai	20	"	A. Easwara Pillai (*Kallakulam II*)
7	"	T. S. Jayantan Nambootiri	21	"	R. Sivaraman Nair
8	"	K. M. Krishnan	22	"	Kainikkara M. Padmanabha Pillai
9	"	T. Krishna Pillai	23	"	Edavanatt S. Padmanabha Menon
10	"	P. C. Narayana Bhattatiripad	24	"	K. A. Narayana Pillai
11	"	K. M. Kuriakose	25	"	M. K. Madhavan Pillai
12	"	V. Ramakrishna Panickar			
13	"	R. Raman Pillai			
14	,,	R. Sambasiva Aiyar			

NOES—30.

1	Mr.	K. C. Abraham	17	Rao Bahadur Dr.	N. Kunjan Pillai
2	"	N. Abdur Rahiman Sahib	18	Mr.	T. C. Thommen
3	"	T. K. Alexander	19	"	K. N. Kesava Pillai
4	"	John Whiteley Tolson	20	"	C. V. Chandrasekharan
5	"	Antony George	21	"	Kayalam Parameswaran Pillai
6	"	S. Chattanatha Karayalar	22	"	G. B. E. Truscott
7	"	T. C. Joseph	23	"	K. George
8	"	T. T. Kesavan Sastri	24	"	R. Pitchu Aiyangar
9	"	E. K. Kunjuraman	25	"	M. Govinda Pillai
10	"	K. Mahomed	26	Mrs.	M. Poonen Lukose
11	"	K. Madhavan	27	Mr.	Pottayil S. Krishna Panickar
12	"	K. Sankaran	28	"	M. K. Janardana Kamath
13	"	P. K. Thomas	29	"	G. Nilakantan
14	"	K. Padmanabhan	30	"	M. Mahomed Haneef
15	"	S. Thiraviam Nadar			
16	"	N. E. Varughese			

NEUTRALS—2.

1	Mr.	T. P. Velayudhan Pillai	2	Mr.	Menatheri N. Kesava Panickar

The amendment was declared lost.

MR. A. THANU PILLAI (*Trivandrum-Rural*): What is the magic involved in this poll? At first it was declared that the motion was carried. Now it is said that the motion is lost.

DEPUTY PRESIDENT: There is no magic in this matter and there are no magicians in this House. It was announced from the Chair that it *appeared* that the motion was carried. The expression was "*appeared*". A definite pronouncement was not made. And at the time the votes were taken all the official members did not raise their hands, probably, because they thought that they could do so at the time

LIBRARY ARCHIVES Kerala Legislative Assembly

of counting hands. That is what struck me. The poll is a device prescribed by law to make sure that the counting was correct. Even if at one time it *appeared* that the motion was carried, this House owes a duty to itself to see that the fact is correctly ascertained. Therefore, the poll was taken and the result has been definitely, correctly and truly declared.

MR. PACODE A. NARAYANA PILLAI (*Vilavankod*): May I take it that on a rough estimate we were right?

DEPUTY PRESIDENT: That is absolutely wrong and irrelevant.

MR. EDAVANATT S. PADMANABHA MENON (*Shertala I*): I do not press my amendment.

The amendment was, by leave, withdrawn.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): Sir, I beg to move the amendment standing in my name.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I rise to a point of order on that. The House has now decided that debts and liabilities due to Government should be excluded from the Bill. The member cannot, therefore, reopen the question.

DEPUTY PRESIDENT: He cannot move that.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*) If I am not permitted, I do not move it. I would very much like to move the amendment.

DEPUTY PRESIDENT: Unfortunately the law does not permit it.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): Then I do not want it. Sir, I beg to move that the remaining part, that is, *Clauses* (ii) *to* (iv) *may be deleted and the following substituted.*

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I rise to a point of order on that also. We have decided that all debts and liabilities due to Government shall be excluded from "debts". Sir, all land revenue and other dues must, therefore, be excluded; and if Mr. Krishna Pillai so amends his motion as to exclude these dues, there is no objection to move his amendment. He can move his amendment on dues recoverable under the Edavagai Regulation, etc.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): I rise to a point of order. There are two parts in this motion. One is with regard to the deletion of sub-clause (i). That has been voted down. Then there is sub-clause (ii). I have sent in an amendment for the deletion of sub-clause (ii). The Law Member states that the existence of clause (i) makes deletion of clause (ii) absurd. Now he argues that since the deletion of part (i) was voted, part (ii) cannot be deleted. According to him part (ii) should not be interfered with because part (i) stands.

DEPUTY PRESIDENT: Mr. Asan has to bear in mind that the Law Member's words will be carefully attended to and considered. They do not become the final word as a ruling of the chair will be. As one

LIBRARY ARCHIVES Kerala Legislative Assembly

[Deputy President.]

who argued the matter, he advanced certain arguments which he thought would be in his favour. Mr. Puthupalli Krishna Pillai is having his seat near Mr. Asan. Mr. Krishna Pillai got up and after a preliminary statement said that he would move his amendment if the Chair permitted him to do that. The Chair did make the observation that the whole amendment would have to be moved. After all this had transpired, which took some little time, the Law Member took a technical objection. When Mr. Asan pointed out to the Chair that the second part of the amendment was first moved, the Chair thought that considering his experience with regard to the first point, Mr. Asan was not desirous of moving that. Otherwise, as soon as Mr. Krishna Pillai got up Mr. Asan who was certainly alive to the situation would not have waited for a considerable time.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): I wanted to move it as soon as Mr. Krishna Pillai had finished.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): With regard to part (ii), it is still open to Mr. Asan and Mr. Krishna Pillai to move such amendments as will not affect part (i).

DEPUTY PRESIDENT: I do not want Mr. Asan to move his amendment now, because I have already called upon Mr. Krishna Pillai to move his amendment.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): Sir, my amendment No. 27 contemplates a reservation in favour of debts due to Government. The first portion relates to arrears of public revenue due to Government. The second relates to dues recoverable under the Edavagai Regulation. According to me, debts due to Edavagais should also stand on the same footing as arrears of land revenue. That idea is conveyed by sub-clause (ii), and since sub-clause (i) has been decided to be retained, I do not want to move my amendment to delete sub-clause (ii).

DEPUTY PRESIDENT: Then we will go to the next amendment. Mr. Asan may move his amendment No. 32.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): I beg to move——

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I rise to a point of order. He cannot now move any motion regarding land revenue because that is clearly a liability due to Government.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): If I am permitted to amend my amendment in view of the previous decision of the House, I shall do so.

DEPUTY PRESIDENT: In the light of the turn which matters took, I am prepared to allow that.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I have got an observation against the amendment. The expression "anything recoverable as land revenue" may include Government dues also.

LIBRARY ARCHIVES Kerala Legislative Assembly

DEPUTY PRESIDENT : Let him shape his amendment properly. Let us see what Mr. Asan is doing.

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : The amendment that I move now is as follows :—

"*Omit the words or anything recoverable as an arrear of land revenue.*"

in sub-clause (*e*) (ii) of Clause 2. I am only making the position clear to show that the apprehension of the Law Member does not exist. Because the Law Member says that by allowing sub-clause (*e*) (i) to stand, all dues due to Government are excluded from their purview. Then I do not know how, when we take away Clause (*e*) (ii), that will be defeated. If that is the argument of the Law Member, my submission is that his point of order is wrong.

DEPUTY PRESIDENT : What is your point ?

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : The Law Member apprehends that, if the words " or anything recoverable as an arrear of land revenue ", are deleted, that is, Government dues which are recoverable as land revenue would come within the purview of this Regulation, my submission is that it will not.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : I am prepared to grant that such an interpretation is no doubt possible. But my apprehension is that, when we make the law, it is only proper that we should make it clear. The object of Mr. Asan is to see that debts not being due to Government but still are recoverable as an arrear of land revenue should be brought within the purview of this Regulation. It is due to the House to make this point clear. We should frame the amendment in as clear a manner as possible.

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : The amendment is very clear.

DEPUTY PRESIDENT : I have bestowed sufficient attention on this point. The Government can realise only land revenue or other debts due to them. The first sub-clause is that any debt or other liabililty due to our Government may not come within the operation of this Regulation. So that while the Government under sub-clause (ii) retains the right to collect land revenue, and when they have power to collect any debt under sub-clause (i) I think Mr. Asan's motion is quite in order.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : May I know the amendment of Mr. Asan ?

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : It reads :—

" Omit ' or anything recoverable as an arrear of land revenue ' occurring in sub-clause (*e*) (*ii*) of Clause 2."

My object is to limit the items of debts that are to be excluded from the purview of the Conciliation Board. The Government under the Revenue Recovery Regulation have stated that they can recover as

LIBRARY ARCHIVES Kerala Legislative Assembly

[A. S. Damodaran Asan.]

an arrear of land revenue any other dues which have to be recovered by Government either on their behalf or on behalf of the Jenmies.

DEPUTY PRESIDENT: Will the member please refer me to the provisions of the Revenue Recovery Regulation in that matter?

MR. A. S. DAMODARAN ASAN (*Mavelikara*): The law is as follows:

"All arrears of public revenue due to Government other than land revenue, all moneys due from any person to Government which under a written agreement executed by such person are recoverable as arrears of public or Land Revenue, and all specific pecuniary penalties to which such person renders himself liable under such agreement".

We have now decided that the Government revenues must be kept intact. Let us at least see the realisation of dues by Revenue Recovery Regulation and the consequent harassment of the people, where such amounts are due to private individuals, is prevented where the debtor seeks his debts to be conciliated through conciliation boards.

MR. K. GEORGE (*Land Revenue and Income Tax Commissioner*): Can the member cite the number of instances of recovery in that manner?

MR. A. S. DAMODARAN ASAN (*Mavelikara*): The Government member must be able to know that well. I will refer him to the Jenmi Kudiyan Regulation where powers are given for realisation of *jenmikaram* as arrears of tax. My point is, that no special privilege need be given in respect of the Jenmies' dues etc. Such creditors enjoy the privileges of recovery by Government as well as the privilege of being considered as a separate class when the question of granting relief to debtors comes. I do not think that any special case bas been made out in those cases. If the Law Member has any plea, let him come out with that, and I will answer him afterwards.

DEPUTY PRESIDENT: Mr. Asan can very well proceed on the understanding that he has no second voice.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): There is apparently no ground for exempting debts that are due to individual creditors and which are now realisable as arrears of public revenue. Such creditors should not be excluded from the purview of the Regulation. Since it has not been proved that those creditors are sufficiently indulgent to the agriculturists, I think no concession is necessary in this direction.

MR. A. THANU PILLAI (*Trivandrum-Rural*): Does Mr. Asan refer to Jenmies' dues or dues to the Devaswom management?

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Since Mr. Thanu Pillai has drawn my attention to the Devaswom dues' I shall explain that I shall speak of Devaswoms under the Government management. They are Personal Deposit Devaswoms. I may say, Sir, from my experience, the powers conferred upon the Government for realising dues to such Devaswoms under the Revenue Recovery Regulation have been abused not in the interests of the State but to benefit certain institutions. When the Revenue Recovery Regulation permits them to recover dues as arrears of land revenue, even the limitation bar does not affect them.

LIBRARY ARCHIVES Kerala Legislative Assembly

DEPUTY PRESIDENT: It is in pursuance of the Regulation such a procedure is adopted.

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : But the trouble is in the application of the rules.

DEPUTY PRESIDENT: Are there not remedies provided in that matter?

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : I will take one instance. With regard to one Personal Deposit Devaswom in Vallikunnam *pakuthi*, Mavelikara taluk, about 300 to 400 persons have not been able to pay their dues to the Devaswom for the last 18 years or so, due to a number of reasons. One was that there were dissensions amongst the managers. But we are not concerned with that. Another point was that there was no proper officer to collect the dues. There were successive failures of crops, so much so the arrears due on each of the lands accumulated to an extent which was even higher than the price of the land itself. The people memorialised Government as the Government took over the management as a Personal Deposit Devaswom and applied the provisions of the Revenue Recovery Regulation for realisation of dues.

DEPUTY PRESIDENT: I hold that chapter of Devaswom history is not necessary in the present instance.

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : Since the House must clearly understand the position, I cited it as one instance.

DEPUTY PRESIDENT: If you think it absolutely necessary, I have no objection.

MR. A. S. DAMODARAN ASAN (*Mavelikara*)) : So then, those ryots memorialised Government that it was on account of a number of cricumstances that arrears accumulated and all those cricumstances might be considered in giving them concessions and that it was not proper to realise from them the dues of more than three years as in the case of other lessees. The Government consulted their legal advisers who recommended the recovery of all arrears under the Revenue Recovery Regulation. Even the law of limitation does not apply. The provisions of the Revenue Recovery Regulation were applied and almost all the agriculturists who have been cultivating the lands for the last so many years belonging to Devaswoms have been deprived of those lands.

DEPUTY PRESIDENT: The Devaswom was deprived of its revenue for some time.

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : That is a different matter. What we find is power is conferred upon Government to realise dues as arrears of public revenue. There is great hardship and that must be removed. Even the provisions that are now enacted under Part II must be made applicable to them.

DEPUTY PRESIDENT: I have one doubt. Under the Jenmi Kudiyan Regulation, the Jenmies had certain rights under law

LIBRARY ARCHIVES Kerala Legislative Assembly

[Deputy President.]

and custom as the result of a pact between them and the Government. The Jenmies accepted a certain position which was conferred upon them by the recent Jenmi Kudiyan Regulation. The consideration that might have prevailed with the Jenmies was that they will be able to get lesser payments more promptly under the Regulation. Is that not an aspect to be considered in this connection?

MR. A. S. DAMODARAN ASAN (*Mavelikara*): If we consider the rights vested by the law and agreements, I think we have to consider that with almost all the transactions. But this Bill ignores the sanctity of such contracts and obligations in all other cases. We are having special remedies to meet an extraordinary situation.

I may add that, where the provisions of the Revenue Recovery Regulation are applied for the realisation of Government dues, it is in the power of Government to remit the amount due to them or to give further time. Here, they are only agencies. So the Government have not even the power to give up any portion of the dues collected by them. They are only tools for implementing the provisions contained in the agreement so much so the Government are helpless in the matter.

DEPUTY PRESIDENT: According to you then, the Government is only a trustee for some purposes?

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Yes. They are bound to realise the full dues from tenants even though they have a heart which will sympathise with them. The Government will not be able to render any help at all. This is an additional reason in support of my motion.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): I rise to second the amendment of Mr. Asan as amended. I can understand the position that will result in the case of moneys due the State where the State themselves will intervene and bring about all concessions necessary for the ryots. We leave the State alone as such. Now we are concerned with other creditors the amounts due to whom have been allowed to be collected by the Government as arrears of land revenue as a concession. The argument that the money collected by the State is not merely for the purpose of any individual or for the selfish purpose of any but for the whole State of 50 lakhs of people and so deserves special consideration, can be granted. But no such argument can be raised against the present amendment of Mr. Asan. No reason can be advanced for making a distinction between the creditors. Even the vulgar analogy of Mr. Sivatanu Pillai cannot hold good. I suppose he has no objection in characterising it like that.

DEPUTY PRESIDENT: By "*vulgar*", you mean "*ordinary*"?

MR. M. SIVATANU PILLAI (*Tovala*) I give him permisson to use that word.

DEPUTY PRESIDENT: Mr. Sivatanu Pillai's permission does not count. It is the Chair's permission that counts.

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): I think that the amendment of Mr. Asan is quite consistent with the principle that has been adopted, and I think even with regard to the dues recoverable by Jenmies the argument cannot be put forward that for purpose of collection they may be granted some concession. But that cannot bring with it the concession that it should be realised as an amount due to the Sovereign State. That is a different matter. The Jenmies, no less than any creditor, ought to go to the rescue of the agriculturists. Is he giving him any other benefit? Is he in any way different from other creditors? I cannot make any distinction between the ordinary creditors and the Jenmies. So Mr. Asan's amendment is reasonable and logical.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, I rise to oppose this amendment. It is made clear that the dues of Government are not sought to be affected by this amendment. But there are various other dues which, for public reasons or similar reasons of paramount importance, are given the privilege of being allowed to be recovered by revenue recovery process. The very fact that the law or the rules under the law allow these dues to be recovered as arrears of public revenue suggests that these should be treated on a different footing from ordinary dues. Take, for example, the case of the Municipalities. The house tax or the vehicle tax due to Municipalities will come under this amendment. The arrears of municipal dues will be sought to be conciliated before the Conciliation Officer. If the dues of Government are protected on the ground that it belongs to 50 lakhs of people, I am sure, that the dues of Municipalities should also be protected because it belongs to, say, 50 thousand people.

Then take the case of *Jenmikaram*. There, again, for certain paramount reasons they are allowed to recover these small amounts by summary process. It is only right that we should exclude them from the definition of debt and should not permit them to be conciliated. It is provided by the law that arrears of *Jenmikaram* not more than one year old may be recovered as arrears of public revenues. Thus, practically the current revenues of the Jenmies are protected. There is good reason why it should be. That arose out of a sort of give and take policy; they have agreed to certain arrangements on certain conditions, one of which is that they will be allowed recovery of their dues by summary process. The *Jenmikarams* are really of the nature of rent accruing from year to year. So there is good reason why they should not be brought under the amendment proposed.

Then again take the case of the Edavaga dues. Mr. Krishna Pillai,—I am sorry he is not here now if he were here would have supported me on this point, namely, that the Edavaga dues should be excluded from the purview of the "debts" coming under this Bill. The Edavaga dues are net dues payable to Government. All these items, for certain public reasons or for certain reasons of paramount importance, are allowed by the Legislature to be recovered by revenue recovery processes.

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Is not the debtor allowed to put in only one petition?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Yes, within two years he can put in only one petition for conciliation. I am speaking of the current revenues of the Jenmies and Edavagais. They should be protected.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Is he not aware that only arrears can be brought up?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): But the wording of the clause is different. What about the current revenues of the Jenmies, the Edavagais and the Municipalities? All these will come as "debt" within the purview of the Bill.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Is it not in regard to arrears only?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Mr. Asan is technically right in so far as Jenmikaram is concerned. In that case it is arrears that are allowed to be recovered by revenue recovery processes. But the year's *Jenmikaram* will become arrears on the day immediately after that on which it should have been paid and with effect from that day the revenue recovery processes become applicable. So also in regard to Edavaga. I am not aware of the circumstances of the Devaswom referred to by Mr. Asan. I would only say that Mr. Asan's observation that Government is powerless does not seem to be quite well-founded. Is it not open to Government as a trustee, to give up any dues if they are satisfied that the interest of the institution would warrant such an action.

MR. PACODE A. NARAYANA PILLAI (*Vilavankod*): May I know whether the *Jenmikaram*, special or current will not come under sub-clause (iv) (iii)?

DEPUTY PRESIDENT: You may put any interpretation. Any assurance given by any other member will not count in the present case.

MR. PACODE A NARAYANA PILLAI (*Vilavankod*): I am putting a question to the Law Member.

DEPUTY PRESIDENT: You are not entitled to put all manner of questions.

MR. PACODE A. NARAYANA PILLAI (*Vilavankod*): I am entitled to put relevant qeustions which will serve useful purpose.

DEPUTY PRESIDENT: I can concede that. I am saying that the assurance of any member, either official or non-official, would not change the language of the sentence. It is an interpretation of law according to your own liking.

MR. PACODE A. NARAYANA PILLAI: (*Vilavankode*): My question is whether *Jenmikaram* special or current will not come under sub-clause (iv) (iii).

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): It is not intended to come under that. In regard to such of the *Jenmikaram* as may be recovered as arrears of land revenue, it will come under the present clause. But there may be *Jenmikarams* which cannot be recovered like that. Arrears of *Jenmikaram* which are more than one year old cannot, I think, be recovered at present as arrears of land revenue. Such arrears will come under the clause referred to by Mr. Narayana Pillai.

MR. T. S. JAYANTAN NAMBOOTIRI (*Travancore Jenmies, North*: സർ, കരംപിരിവു റഗുലേഷനനുസരിച്ചു പിരിക്കുന്നതിൽ ഗവണ്മെൻറിനു ചെല്ലേണ്ടതല്ലാത്തതായ സകല കടങ്ങളേയും കൺസിലിയേഷൻ ബോർഡിൻെറ തീരുമാനത്തിനു വിധേയമാക്കണമെന്നുള്ളതാണു ഈ ഭേദഗതി. ഞാൻ ഇതിനെ എതിർക്കുന്നു. ജന്മികുടിയാൻ റഗുലേഷനനുസരിച്ചു് ഒരു കൊല്ലത്തിനകമുള്ള ജന്മിക്കരം കരംപിരിവുറഗുലേഷൻപ്രകാരം താലൂക്കിൽനിന്നും പിരിച്ചു് ജന്മിമാർക്കു കൊടുക്കണമെന്ന വ്യവസ്ഥയുണ്ടു്. ഇങ്ങനെ ഒരു വ്യവസ്ഥചെയ്യാമെന്നു സമ്മതിച്ചതുകൊണ്ടാണു് ജന്മിമാരും കുടിയാന്മാരും രാജിപ്പെട്ട വസ്തുവിന്മേലുള്ള ഉടമസ്ഥാവകാശം തുടങ്ങിയുള്ള ജന്മിമാരുടെ ചില അവകാശങ്ങളും നൂതനമായ യാതൊരു പ്രതിഫലവുംകൂടാതെ കുടിയാന്മാർക്കു വിട്ടുകൊടുത്തതു്. ജന്മികുടിയാൻറഗുലേഷൻകൊണ്ടു ജന്മിമാർക്കു ദോഷമാണു ഫലമെങ്കിലും ആ ദോഷങ്ങളെയെല്ലാം സഹിച്ചു ജന്മിമാർ അതിനു വഴിപ്പെട്ടതു് യഥാകാലങ്ങളിൽ ഗവണ്മെൻറിൽനിന്നും ജന്മിക്കരം പിരിച്ചു കൊടുക്കുമെന്നുള്ള വിശ്വാസംകൊണ്ടു മാത്രമാകുന്നു. ആ ഒരു സഹായംകൂടി ഈ ഭേദഗതികൊണ്ടു് എടുത്തുകളയുന്നതു് ജന്മിമാരുടെ നിർഭാഗ്യമെന്നേ പറയുവാനുള്ളൂ. കൂടുതൽ കൂടിശികയുണ്ടെങ്കിൽ അതു് കരംപിരിവുറഗുലേഷൻ അനുസരിച്ചു ഈടാക്കാൻ നിവർത്തിയില്ല; ഇപ്പോഴുള്ളതിനെ ഈടാക്കുന്നുമില്ല. ഉർല്ലഭം ചില കേസുകളിലല്ലാതെ ജന്മികുടിയാൻറഗുലേഷനിലെ റെന്യൂ-ഡിസെക്ഷൻ അനുസരിച്ചുള്ള നടപടികൾ ഒന്നുംതന്നെ ജന്മിമാർ നടത്തുന്നില്ല. ഒരു കൊല്ലത്തിനകത്തുള്ള ജന്മിക്കരം കൂടിശികക്കൂടി കൺസിലിയേഷൻബോർഡിനു വിട്ടുകൊടുക്കുന്നപക്ഷം ജന്മിമാർക്കു ഇതിൽപരം ഒരു വൈഷമ്യം വരാനില്ല. ജന്മിക്കരം എന്നു പറയുന്നതുതന്നെ വസ്തുവിൻെറ ആദായത്തെ സംബന്ധിച്ചു നോക്കുന്നപക്ഷം വളരെ തുച്ഛമാണു്. പണ്ടാരപ്പാട്ടം വസ്തുക്കൾക്കു സെറ്റിൽമെൻറു പാട്ടമിച്ചം മുഴുവനും കരമാണു്. ജന്മിമാർക്കു സർക്കാർകരവും നീക്കിയാൽ സെറ്റിൽമെൻറു പാട്ടമിച്ചത്തിൻെറ എട്ടിലേഴുഭാഗംമാത്രമെ കിട്ടുന്നുള്ളൂ. ഈ തുച്ഛമായ തുകപോലും അവക്കു

LIBRARY ARCHIVES Kerala Legislative Assembly.

[Mr. T. S. Jayantan Nambootiri.]

ഈടാക്കാൻ നിവർത്തിയില്ലാതെയിരിക്കുന്നതു വളരെ സങ്കടകരമായ ഒരവസ്ഥയാണു്. അതിനാൽ ഈ ഭേദഗതി സ്വീകാര്യമല്ല.

ദേവസ്വങ്ങളെപ്പറ്റിയും ഇവിടെ സൂചിപ്പിക്കുകയുണ്ടായി. ഇവിടേ ധാരാളം പ്രൈവറ്റുദേവസ്വങ്ങളുണ്ടു്. അവയ്ക്കെല്ലാം കാണപ്പാട്ട വസ്തുക്കളും ഉണ്ടു്. അവിടെയും ആദായം ഈടാക്കാൻ നിവർത്തിയില്ലാതെവരുന്നപക്ഷം ദേവസ്വങ്ങളിലെ നിത്യനിദാനംപോലും മുട്ടുന്നതാണു്. ഈവക കാരണങ്ങളാൽ ഞാൻ ഈ ഭേദഗതിയെ എതിർക്കുന്നു.

MR. P. C. NARAYANAN BHATTATIRIPAD (*Travancore Jenmies, South*): സർ, ഞാനും ഈ ഭേദഗതിയെ എതിർക്കുന്നു. ജന്മിക്കരം ശരിയായി പിരിഞ്ഞുകിട്ടാത്തതുകൊണ്ടു് പല ദേവസ്വങ്ങളിലും നിത്യനിദാനം വിശേഷാൽ അടിയന്തിരം മുതലായവയ്ക്കു നിവർത്തിയില്ലാതെ വന്നിട്ടുണ്ടു്. താലൂക്കിൽ കൊടുക്കുന്ന അപേക്ഷയനുസരിച്ചു കരംപിരിഞ്ഞുകിട്ടുന്നുണ്ടെങ്കിലും ജന്മിമാർ വളരെ കഷ്ടപ്പെട്ടാണു കഴിച്ചുവരുന്നതു. പഞ്ച ഭോഗങ്ങടം, അതായതു് ആഹാരത്തിനുള്ള നെല്ലു്, തേങ്ങ മുതലായ സാധനങ്ങടം അതാതു കാലങ്ങളിൽ കിട്ടിക്കൊണ്ടിരുന്നതിനെക്കൂടി ഇപ്പോഴത്തെ ജന്മികടിയാൻ റഫ്രലേഷനനുസരിച്ചു പണമാക്കി അതു ശരിയായിട്ടു പിരിഞ്ഞുകിട്ടുമല്ലൊ എന്നുള്ള വിശ്വാസത്തിന്മേലാണു ജന്മിമാർ കഴിച്ചുകൂട്ടിവരുന്നതു്. ജന്മിമാരും ദേവന്മാരും ആഹാരമില്ലാത്ത രണ്ടു ജന്തുക്കളാണെന്നാണു് ഇപ്പോഴത്തെ നടപടികൊണ്ടു വിചാരിക്കേണ്ടിയിരിക്കുന്നതു്. എല്ലാ പ്രജകളേയും രക്ഷിക്കുന്ന ഗവണ്മെൻറാണു്, സംസാരിക്കാത്ത ദേവൻ, സംസാരിക്കുന്ന ജന്മി, ഈ രണ്ടു ജന്തുക്കളേക്കൂടി സംരക്ഷിക്കേണ്ട കടമയുണ്ടു്. ജന്മിമാരും കുടിയാന്മാരും തമ്മിൽ യോജിച്ചു ചെയ്തിരിക്കുന്ന സൌജന്യങ്ങടംക്കു ബാധകമാകാതെ ആണു ഈ നിയമം പാസ്സാക്കേണ്ടതെന്നു ഞാൻ അഭിപ്രായപ്പെട്ടുകൊള്ളുന്നു.

The amendment was put to vote and lost.

MR. K. R. ELENKATH (*Kalkulam I*): I beg to move the following amendment:—

"*In Clause 2, delete sub-clause* (*e*) (*iv.*)"

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I wish to put one question. Is it the intention of the member to delete sub-clauses (*i*), (*ii*) and (*iii*) of sub-clause (*e*) (iv)?

MR. K. R. ELENKATH (*Kalkulam I*): Yes, Sir.

LIBRARY ARCHIVES Kerala Legislative Assembly

DEPUTY PRESIDENT: I am confronted with this difficulty that there is no particular sub-clause as sub-clause (iv). There is sub-clause (iv) (*i*), (iv) (*ii*) and (iv) (*iii*). In matters of legislation, in the case of amendments we have to be more specific. Mr. Elenkath's motion contemplates only sub-clause (iv). But there is no such sub-clause as sub-clause (iv). Though it is not specific, I am prepared to show some indulgence in this case.

MR. K. R. ELENKATH (*Kalkulam I*): I have tabled the amendment with regard to the main sub-clause (iv) which consists of three minor sub-clauses. I have no objection to put each part of it to vote separately.

DEPUTY PRESIDENT: The question of putting to vote need be considered only after argument. You have not yet made the motion.

MR. K. R. ELENKATH (*Kalkulam I*): Sub-clause (iv) says that agricultural debt shall not include, except for purposes of Part II of this Regulation, any debt incurred for purposes of trade or any debt due to a co-operative society or any debt arising out of any transaction of the nature of a lease including a Kanapattom transaction falling within the purview of the Travancore Jenmi and Kudiyan Regulation of 1071. Sir, I do not see the reason which prompted the framers of the Bill and the members of the Select Committee to make an exception with regard to these debts and in not affording the benefit of this Regulation to the indebted agriculturists whose creditors belong to the above category. They are of course given the benefit of representing their grievance before a Conciliation Board. But they are at the same time denied all the other privileges which are intended for the general agricultural debtors. Sir, the position of the Kanapattom tenants is the same as those who have incurred agricultural debt in as much as they were unable to pay their dues owing to scarcity in the quantity of the product and decrease of their value. I do not see why the three sets of debtors enumerated in three sub-clauses should be denied the benefit of this Regulation. Of course, there may be the argument advanced that concessions are granted to co-operative societies in the way of allowing convenient instalments and lower rates of interest excluding of course fines and penalties.

DEPUTY PRESIDENT: Can you speak on sub-clause (iv) (iii) first because debts arising out of any transaction of the nature of lease including a Kanapattom transaction falling within the purview of the Travancore Jenmi and Kudiyan Regulation and the previous amendment go together?

MR. K. R. ELENKATH (*Kalkulam I*): I shall deal one by one.

It may be advanced that in a co-operative society both the debtor and the creditor constitute the same person. The funds for the co operative societies are provided by the agriculturists and at the same time it is the agriculturists who are debtors of those societies. It may be construed that the main object of the co-operative society is to provide facilities for the ordinary agriculturists to find means for funds specially during the cultivation season.

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. KAYALAM PARAMESVARAN PILLAI: (*Additional Head Sirkar Vakil*): Is it the member's point that dues to the co-operative society should be brought within the "debts" proposed to be brought within the purview of this Bill.

MR. K. R. ELENKATH (*Kalkulam I*): The debtors of co-operative societies should not be exempted from the privileges of this Regulation. As it is, they are given facility to approach the Board for conciliation but are denied the other privileges in case the efforts of the Conciliation Board end in failure or remedy outside the Board is sought for. As co-operative societies are the only organisation where the ordinary villager can find funds, it may be to co-operative societies that a larger proportion of the debt of the poorest class of agriculturists is due. And it is only proper that by giving the benefits of this Regulation to them the agriculturist who is most in need of relief would be helped to a great extent. The ordinary creditor may have other means also for realising the money. But in the case of societies the poor agriculturists are advanced money by the co-operative society not on their own security and that of their property but on the joint agreement of others also who are share-holders of the society. If co-operative societies are not included within the provisions of this Regulation, it is not the rich debtor who possesses property adequately for offering security but the poor agriculturists that would suffer. I do not see why any society should suffer by adopting this amendment. The creditor as well as the debtor being the society itself, the creditor who suffers least on account of the Bill is the society and in that case when an ordinary creditor is by this Regulation put to inconveniences in realising the amount due to him I ask why this creditor who stands to lose least should be exempted from the inconveniences of other creditors. As I have already said, it is the poor agriculturist's money that forms the fund for the co-operative societies, from which amount loans are advanced. Why not that creditor also be subjected to the inconvenience of this Regulation? For these reasons, the amendment may be accepted.

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): I second it and I support Mr. Elenkath as regards sub-clause (iv) (*ii*).

DEPUTY PRESIDENT: Do you support the motion as a whole?

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): No, only a portion of it.

MR K KUNJUKRISHNA PILLAI (*Quilon I*): Sir, I second the motion of Mr. Elenkath. I think there is no necessity to elaborate the necessity of amending these provisions because the items of debts included under sub-clauses (*i*), (*ii*) and (*iii*) deserve no special consideration. I do not see any reason for considering a debt incurred for trade purposes alone to be exempted. The agriculturists incur debt for various other purposes. All these debts are also included for conciliation. I do not understand why he should be exempted in the case of trade debts alone.

LIBRARY ARCHIVES Kerala Legislative Assembly

It will be admitted on all hands, Sir, that most of the debtors to co-operative societies are small agriculturists who are in greatest need of the concessions now sought to be given under this enactment. Further, on account of the special privileges given to co-operative societies for realising their dues, it turns out, almost always, that, ultimately, these societies are able to realise much heavier interest than any private creditor. It may be argued, Sir, that after all the debts due to co-operative societies do not amount to any very big amount. But, all the same, it must be realised that these debts also aggregate to about Rs. 40 lakhs. The Debt Redemption Committee, when they examined the present Registrar of Co-operative Societies, also his predecessor Mr. Vaidyalingam Pillai, have been able to ascertain that the opinion of these two officers is in favour of including debts due to co-operative societies also within the purview of this Bill. These gentlemen were not in favour of exempting co-operative societies from the purview of this legislation and their opinion is entitled to considerable weight. Further, now, these societies are giving concessions, with the help of the powers vested in them. If we give them any special treatment in this Bill, that may induce them to stop granting these concessions hereafter; because, they will argue that public opinion is against any concession being given to debtors to co-operative societies. Therefore, by exempting these societies from the operation of this enactment, indirectly, we will be depriving the poor agriculturists of the small concessions that they are now getting at the hands of the co-operative societies. Sir, I do not think there is any reason why we should exempt co-operative societies from the operation of this piece of legislation.

With regard to the third item, I have already expressed my opinion when I supported the previous amendment. I do not find any reason for exempting any other class of creditors except the Government, and Government, with regard to land revenue only.

MR. R. RAMAN PILLAI (*Chunganachery* cum *Peermade II*) : Co-operative institutions came to existence in this State only a few years ago. Poor illiterate people, who were badly in need of credit but could not get it, were attracted into these societies and were made shareholders. In fact these societies have taught them how to borrow; and most of these societies have been all along exacting very heavy interest from these poor people. 16 per cent. interest has been realised from them. While, under the law in force in the country, even joint-stock banks cannot realise from their debtors more than 12 per cent. interest, or more than half the principal by way of interest, these co-operative societies have been able to get by way of interest more than double the principal. As I said, they have charged and obtained interest at the rate of 16 per cent.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : Can that be prevented if this amendment is carried ?

MR. R. RAMAN PILLAI (*Chunganachery* cum *Peermade II*) : I am only suggesting that debtors to co-operative societies should also be afforded adequate relief.

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. M. GOVINDA PILLAI (*Registrar of Co-operative Societies*:) Is the member aware of the recent circular of the Registrar of Co-operative Societies?

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): Yes, I am aware.

I know, Sir, that the Registrar has issued a circular recently that the co-operative societies may recover interest at 3 cash per rupee. The only thing that the present Registrar has done is that he has asked the societies to be contented with an amount that will be equal to the sum calculated at 16 per cent. interest minus the sum ordered to be withheld *i. e.*, the dividend, from 11C7.

MR. M. GOVINDA PILLAI (*Registrar of Co-operative Societies*): Has there been any real profit to be distributed as dividend?

DEPUTY PRESIDENT: I am not inclined to allow the discussion to proceed on that line. There is no scope now for any altercation between Mr. Raman Pillai and the Registrar of Co-operative Societies. Mr. Raman Pillai made some observations about the Registrar of Co-operative Societies; immediately Mr. M. Govinda Pillai seems to have thought that he could give an answer as Registrar of Co-operative Societies. He must realise that he is not here now in his capacity as head of the Co-operative Department. The matter may therefore be left there, and Mr. Raman Pillai may proceed with his argument on the amendment now before the House.

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): Sir, my only point is that, the concessions now granted by the Registrar of Co-operative Societies are not at all satisfactory.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Is it the member's point that, if the Registrar orders that the rate of interest leviable by the co-operative societies should be reduced, it would not be binding on the co-operative societies?

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*) The interest cannot be reduced until the bye-laws of the society concerned are amended; and no societies are doing so in pursuance of the Registrar's order.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): In that case, is it not better that this question is brought up when the next Bill, which relates to co-operative societies, comes up for consideration?

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): I am not quite sure whether that will be sufficient.

MR A. THANU PILLAI (*Trivandrum—Rural*): May I ask whether it is the practice in Travancore for co-operative societies to obey the orders of the Registrar? (*Laughter*).

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): As far as my knowledge goes, the bulk of the societies, especially those conducted by poor illiterate people, do obey the orders of the Registrar.

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. A. THANU PILLAI (*Trivandrum—Rural*) What about the societies run by influential and rich people ?

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*) : It may be, Sir, that in Trivandrum the Registrar is not obeyed. In our parts, in Ettumanur, Minachil and other places, for instance, the co-operative societies are being run by poor illiterate agriculturists with the aid of petty school masters. Those societies are afraid of the Registrar, and obey him always. It is these societies that realise interest at 16 per cent. I have seen several awards like that. If the Registrar has any doubt, I am prepared to give him specific examples. I am prepared to prove it by documentary evidence. Therefore, Sir, it is very necessary that co-operative societies also are brought within the purview of this enactment.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : Assuming that the benefit of all the provisions of this Bill is conferred in regard to debts due to co-operative societies also, is it the member's view that the Registrar of Co-opertive Societies will be bound by these provisions in making his awards ?

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*) : I believe so. And this is the reason why I want the amendment to be accepted by this House.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : Sir, in regard to the co-operative societies, the Bill provides that they also should be treated like other creditors in so far as conciliation is concerned, so that when a Conciliation Board deals with the affairs of a debtor, the debts due to co-operative societies also will be brought under the provisions of the proposed law. The rate of interest may be reduced, and even any method of repayment of the debt may be directed by the Board. The weak point, however, is that these awards given by the conciliation boards must be *accepted* by the society concerned. Let us assume that, in a particular instance, the society chooses not to accept the award given by the Conciliation Board. What will follow is that the provisions of Part III will become practically useless and ineffective in such a case. That is why I put the question whether the Registrar will be bound to carry out the provisions of this Regulation. He will be bound by them only if some duty is cast upon him by this Bill. While this enactment casts some duty on civil courts, it does not cast any duty on the Registrar of Co-operative Societes who has to deal ultimately with debts due to co-operative societies. Therefore, unless the award of the Conciliation Board is accepted by the society concerned, the debtor cannot get any relief under *this* Bill. Let us assume for a moment that there are Shylockish societies which recover 16 or 20 per cent. interest. In such cases, the proper thing for the debtor to do is to apply to the Conciliation Board and get a conciliation award. Ordinarily, it is assumed that the conciliation authority has been fair and impartial in giving the award. If the society does not accept the

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. Kayalam Paramesvaran Pillai.]

award, the debtor must produce that award to the Registrar of Co-operative Societies and apply for the Registrar's award being made in terms of the conciliation award. Further all necessary provisions in this direction may be made in the Co-operative Bill which will come up before this House after this Bill is finished.

DEPUTY PRESIDENT : Are you likely to take up some more time?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : Yes, Sir.

DEPUTY PRESIDENT : Then the House will now rise and meet again to-morrow at 11 a. m. as usual.

The House adjourned at 4. 59 p. m.

K. MADHAVA KURUP,
Secretary to the Sri Mulam Assembly.

LIBRARY ARCHIVES Kerala Legislative Assembly